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FORMS OF PROCEEDINGS  
IN  
MARITIME CAUSES.

PRINTED BY W. HUTCHISON, GREENOCK,  
FOR  
T. & T. CLARK, EDINBURGH.

J. SMITH AND SON, . . . . . GLASGOW.  
STEVENS AND SONS, . . . . . LONDON.  
STEVENS AND HAYNES, . . . . . ,

# FORMS OF PROCEEDINGS

IN

## MARITIME CAUSES

BEFORE THE

SHERIFF COURTS IN SCOTLAND.

BY

ROBERT NEILL,

SOLICITOR AND NOTARY PUBLIC, GREENOCK.



EDINBURGH :

T. & T. CLARK, LAW PUBLISHERS, 38 GEORGE STREET.

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MDCCCLXXVIII.

#### **ADDITIONS AND CORRECTIONS.**

Page 42, line 4; page 45, line 16; and page 51, line 5, add after the word "*causa*" the words "at the pursuer's instance," and the same corrections to be made in the narration of the prayer of the Petitions in the Precepts.

## PREFACE.

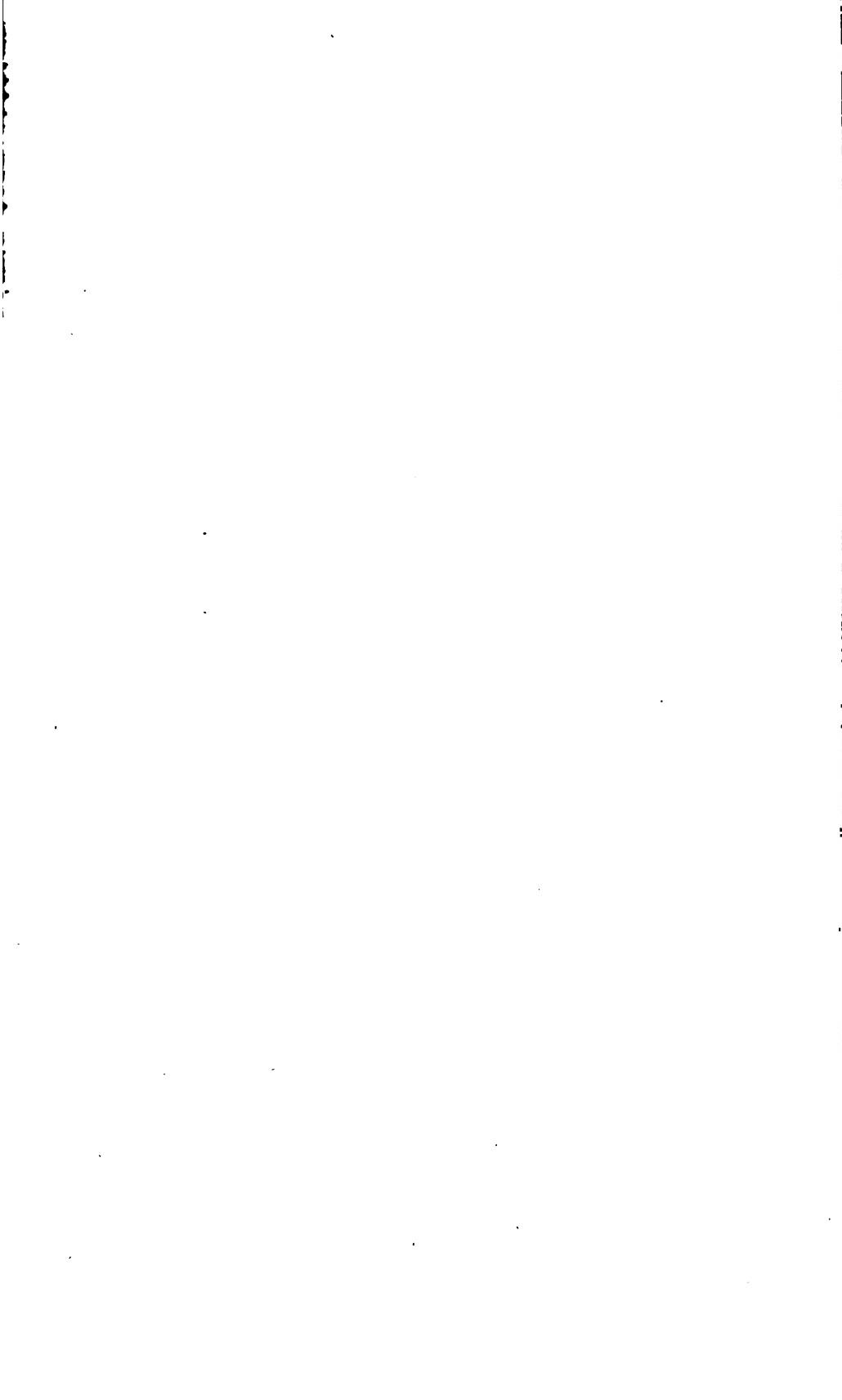
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*From the earliest period of my connection with the law (now about forty years), I have taken much interest and had considerable practice in Maritime Cases. Reckoning no further back than 1850, the affairs of more than 4000 vessels have, in one way or another, come under my observation, and I have over and over again had to consider and deal with almost every question that can arise in maritime procedure.*

*In shipping cases the practitioner has, in many instances, to act without much time for consideration. I have therefore been induced to put on record, in the following pages, some of the experience I have had, in the hope that the "Forms," with the explanatory observations, may prove of some assistance to my professional brethren.*

*All the Forms of Petitions have been adapted to the requirements of the recent statutes regulating Sheriff Court proceedings, and the Forms of Petitions for "Sale," and "Set and Sale," of vessels, have been based on the old forms given in "Boyd's Proceedings" and "Smith's Maritime Practice," published respectively in 1808 and 1832.*

*Greenock, October, 1878.*



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# FORMS

IN

## MARITIME PROCEEDINGS.

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Before giving any of the Forms in maritime proceedings, it may be proper to refer, first, to the constitution of the old High Court of Admiralty in Scotland and its powers; and, secondly, to the new Courts to which the powers of the High Court were transferred on its abolition in 1830.

### I.—AS TO THE CONSTITUTION OF THE HIGH COURT, AND ITS POWERS.

1. The High Court of Admiralty was established and had its jurisdiction and powers defined by the Statute 1681, cap. 16, the terms of which were as follows, viz:—"Our Sovereign Lord considering that "the clearing and establishing the jurisdiction of the "High Admiral of this kingdom will greatly tend to "the advancement and encouragement of trade and "navigation, Therefore His Majesty, with advice and "consent of the estates of Parliament, doth ratify and "approve the 15th Act of the twelfth Parliament of

“ King James the Sixth, in the whole heads, clauses,  
“ and articles of the same ; and decerns and declares  
“ the High Court of Admiralty to be a sovereign  
“ judicature in itself, and of its own nature to import  
“ summar execution ; And statutes and declares,  
“ That the said high admiral, as he is His Majesty’s  
“ Lieutenant and Justice-General upon the seas, and  
“ in all ports, harbours, or creeks of the same, and  
“ upon fresh waters or navigable rivers below the first  
“ bridges, or within the flood marks, so far as the  
“ same does or can at any time extend ; so the said  
“ High Admiral hath the sole privilege and jurisdic-  
“ tion in all maritime and seafaring causes foreign  
“ and domestic, whether civil or criminal, whatever,  
“ within this realm, and over all persons as they are  
“ concerned in the same : And prohibits and dis-  
“ charges all other judges to meddle with the decision  
“ of any of the said causes in the first instance,  
“ except the great Admiral and his deputies allenarly.  
“ And statutes, ordains, and declares, That it is the  
“ privilege of the said High Admiral, to cause parties  
“ become enacted and find caution, not only for com-  
“ pearance, but for performance of the acts and sen-  
“ tences of his court ; and that he may punish all  
“ breakers of his arrestments, and resisters of his  
“ officers in the execution of his precepts ; and apply  
“ the fines and amerciaments to his own use, conform  
“ to the laws of the Kingdom : And further statutes

“ and declares, That the High Court of Admiralty is  
“ a supreme court ; and that the decrets and acts of  
“ all other inferior courts of admiralty are subject to  
“ the review and reduction of the said High Court of  
“ Admiralty. And for the more ready and quick  
“ dispatch of justice, in maritime and seafaring causes  
“ foreign and domestic, whether civil or criminal,  
“ within this realm, and over all persons in so far as  
“ they are concerned in the same, both to natives  
“ and strangers, our Sovereign Lord, with advice and  
“ consent foresaid, prohibits and discharges all advo-  
“ cations in the foresaid causes from the said Court  
“ of Admiralty, to the Lords of Session, or any other  
“ judges whatsoever, in all time coming : and that  
“ no suspension or other stop to the execution of the  
“ decrets or acts of the said Court of Admiralty be  
“ passed by the Lords of Session at any time hereafter  
“ except by the whole Lords in præsentia in time of  
“ session, and by three of the said Lords in time of  
“ vacancie met together to that effect ; and that if  
“ any suspensions or stops shall happen to be passed  
“ in manner foresaid, the same be summarily dis-  
“ cussed upon a bill, and be privileged and exeemed  
“ from the ordinary course of the roll ; and if, upon  
“ discussing thereof, the same shall be found to have  
“ been unjustly and maliciously raised, that the said  
“ High Court of Admiralty may, upon the application  
“ made by the parties concerned, modify and decern

“the damage they have sustained by the saids sus-  
“pensions and stops of execution of their acts and  
“decreets, attour the expenses of plea before the  
“Lords of Session, which is to be modified by the  
“said Lords of Session. As also, His Majesty, with  
“the advice and consent foresaid, statutes and ordains,  
“That it shall be lawful and competent to the said  
“Court of Admiralty to review their own decrets  
“and sentences if there be just occasion for the same.  
“And His Majesty, with the advice and consent  
“foresaid, decerns and declares, That it is the sole  
“right and privilege of the High Admiral and his  
“deputes, the judges of the High Court of Admiralty,  
“to grant passes and safe conducts to all ships: and  
“inhibits and discharges all others to grant the same,  
“as they will be answerable upon their highest peril.  
“And His Majesty, with advice and consent foresaid,  
“casses, annuls, and rescinds all and whatsoever  
“laws, acts of parliament, or customs, contrary  
“to or in any ways inconsistent with this present  
“act.”

2. From this period down to the union of England and Scotland, the Admiralty Judge exercised all the above recited powers and jurisdictions; and as the preservations of the rights and jurisdictions of the Court affected the trade and commerce of the nation, it was provided by statute 5 Anne cap. 8 sect. 1, art.

19th, " That all Admiralty jurisdiction shall be under  
" the Lord High Admiral, or Commissioners for the  
" Admiralty of Great Britain: and the Court of  
" Admiralty now established in Scotland shall be  
" continued; and all reviews, reductions, or suspen-  
" sions of the sentences in maritime causes, competent  
" to the jurisdiction of that Court, shall remain in  
" the same manner as now in Scotland, until the Par-  
" liament of Great Britain shall make such regula-  
" tions as shall be judged expedient for the whole  
" United Kingdom; so as there be always continued  
" in Scotland a Court of Admiralty such as in  
" England for determination of all maritime cases,  
" relating to private rights in Scotland competent to  
" the jurisdiction of the Admiralty Court; subject,  
" nevertheless, to such alterations as shall be made  
" by the Parliament of Great Britain."

3. The Lord High Admiral had the privilege of appointing the Judge of the Admiralty Court, the seat of which was in Edinburgh. This Judge was accustomed to appoint deputies resident at the various seaports, in order that those engaged in maritime affairs might have at hand a local judge to whom they could apply for, and without delay obtain a summary order in any matter requiring an immediate remedy. How very ample—and not more ample than was necessary, as will be well known to those who have

been in practice at a seaport—were the powers of those Admiral-deputes will be seen from the following copy of the Commission of the late Claud Marshall, Esq., who held the office of Sheriff-Substitute and Admiral-Depute at Greenock for the long period from 1815 till 1855 :—

“ By the Right Hon. James Wolfe Murray, Judge of the High Court of Admiralty in Scotland.

Whereas I, the said James Wolfe Murray, considering that there has been a great increase in the Trade and Shipping of the Towns of Greenock and Port-Glasgow, and other ports situated on the Frith of Clyde ; and that it would be of great advantage to have a subordinate Admiralty Court at Greenock for the dispatch of business in certain causes of a maritime and seafaring nature, with a jurisdiction also in certain criminal matters : Do Therefore, in virtue of the powers contained in my commission, hereby nominate and appoint Claud Marshall, late Writer in Glasgow, and now one of the Sheriff-Substitutes for the County of Renfrew, in whose integrity, learning, and ability, I have reason to confide, to be Judge Admiral Depute in and over that part of the River Clyde which extends from Port-Glasgow to the confines of the County of Renfrew on the south, and in all the towns, ports, harbours, and creeks, and upon all the fresh waters and navigable rivers, within the flood marks in the said County, from the said Port-Glasgow inclusive, to the southern confines of said County : and I hereby delegate and bestow upon the said Claud Marshall, the following judicial powers in maritime causes, he always being responsible for the due exercise thereof :

(1.) The power of issuing Admiralty precepts duly authenticated by the Clerks of the High Court of Admiralty, for the purpose of citing debtors to appear before said High Court, and also warrants

for the arrestment of vessels and goods at sea or in harbour, upon the depending actions in the said High Court of Admiralty, at the instance of creditors, joint owners, or others having interest.

(2.) The power of granting warrants for arresting vessels and goods at sea or in harbour, on summary application of creditors, joint owners, or others having interest, in cases where no action has been instituted in the High Court of Admiralty.

(3.) The power of loosing arrestments of vessels and goods at sea or in the harbour, the said arrestment being on depending actions, and being loosed always on sufficient caution found to make the subject arrested forthcoming ; and this power is given whether the said arrestments have been laid on by the High Court of Admiralty in virtue of precepts authenticated and issued from that Court, or have proceeded on warrants granted by the said Judge Admiral Depute himself, upon summary applications ; and also the power of preventing and punishing breaches of such arrestment, and of taking such other steps as are necessary and usual in this department of judicial procedure.

(4.) The power of granting warrants upon the summary application of creditors and others interested for arresting and securing the persons of debtors and others who, being afloat, on ship-board, or repairing thereto, are in *meditatione fugae*, until they find caution in common form.

(5.) The power of granting warrants upon summary applications for the delivery and the deposition of the cargoes of vessels, to the effect of securing the maritime hypothecs and other such inferior rights.

(6.) The power of stopping in transitu goods at sea, on ship-board, landing or landed on the quay or beach, or in warehouses, upon the summary application of the vendor, consignor, shipper, or others interested, or of those claiming in their right.

(7.) The power of granting warrants and orders upon summary

applications of any of the persons interested, with regard to vessels which are alleged to have been either improperly or not fully loaded, as also vessels which have suffered damage, or are in danger; and with regard to damaged goods, for the purpose of ascertaining their state, and of preventing farther loss, such as orders for the landing warehousing, management, and disposal of damaged goods and inspection of them, and vessels, &c., reserving the right of parties to be determined in an ordinary action; but always without prejudice to the powers of the Vice-Admiral of the bounds, if any such there be, as conservator of wrecks.

(8.) The power of judging without limitation as to the amount of the claim or otherwise, in questions of sailors wages, which are of an alimentary nature and require summary dispatch, as also to judge and determine in all questions between masters and sailors, and between owners of ships and the masters, or any of the crew respecting their going or not going to sea in vessels in terms of agreement.

(9.) The power of judging in questions of property of open boats, and inferior real interest in them, navigating the River and Frith of Clyde, and in square-sailed lighters commonly called gaberts, plying the Frith of Clyde within the bounds aforesaid.

(10.) The power of judging in all questions of a proper maritime nature in which ordinary procedure alone is requisite, provided the sum concluded for does not exceed twelve pounds sterling.

(11.) The power of granting concurrences in civil matters on all letters passing the signet, and the power of granting concurrences in matters of crimes or delinquencies, in support of the warrants and decrees of any competent court.

(12.) The power of granting warrants for the arrest and commitment of persons who have committed crimes or delinquencies within the jurisdiction of the High Court of Admiralty, with a view to their trial in the said High Court.

(13.) The power of summarily enforcing the observation of the laws and regulations respecting quarantine, and of preventing, repressing, and punishing all breaches or attempted breaches thereof.

(14.) I hereby confer on the said Deputy a criminal jurisdiction in all riots, batteries, and assaults, which may be committed on the water within the bounds aforesaid, with power only to fine and imprison delinquents ; and likewise the power of judging in all proper maritime cases connected with and of similar nature to those above specified, which require the immediate interposition of a Court of Admiralty, and summary dispatch.

Finally,—I authorize the said Depute to name and appoint a fit and proper person, for whom he shall be responsible, to act before him as Procurator-Fiscal in all cases falling within the powers herein conferred where the public interest is or may be concerned ; and also to enforce the observance of all those forms and modes of procedure which are recognised by the law of this country, and which are necessary for carrying into effect the fore-said judicial powers. On the other hand, I, the said James Wolfe Murray, hereby reserve to myself the power of recalling, when I think fit, this commission, and all or any of the powers thereby bestowed : As also of reviewing the proceedings, interlocutors, and decrees of my said Deputy by advocation, suspension, or reduction, or in any other manner recognised by law as accords. And I ordain this commission to be recorded in the books of the said High Court of Admiralty. In testimony whereof, I have subscribed these presents, written upon this and the three preceding pages of stamped paper, by John Gibb, my clerk, at Edinburgh, the twentieth day of June, one thousand eight hundred and fifteen years, before these witnesses, Charles Raitt, clerk in the Admiralty Office at Edinburgh, and the said John Gibb, writer hereof.

(Signed) J. WOLFE MURRAY.

(Signed) Charles Raitt, Witness.  
John Gibb, Witness.

Such were the powers of the ancient High Court of Admiralty and its subordinate local courts until the year 1830, when the Act of 1st William IV. cap. 69, was passed ; and it now remains to be shewn what is the nature of the jurisdiction of the Courts,—the Court of Session and the Sheriff Court,—to which the powers of the ancient High Court were transferred.

## II.—AS TO THE POWERS AND JURISDICTION OF THE COURT OF SESSION AND SHERIFF COURTS IN ADMIRALTY CASES.

1. By section 21st of the Act 1st William IV. cap. 69, it was enacted "That the High Court of Admiralty shall be abolished and that hereafter the Court of Session shall hold and exercise original jurisdiction on all maritime civil causes and proceedings of the same nature and extent in all respects as that held and exercised in regard to such causes by the High Court of Admiralty before the passing of this Act ; and all applications of a summary nature connected with such causes may be made to the Lord Ordinary on the Bills. Provided always that such causes not exceeding the value of twenty-five pounds sterling shall be instituted and carried, in the first instance, before an inferior court in the same manner and with the same exceptions specified in an Act passed in the year sixteen hundred and seventy-two, entitled 'An Act concerning the regulations of the judicatories.'"

2. By section 22nd it was enacted "That the Sheriffs of Scotland and their substitutes shall, within their respective sheriffdoms, including the navigable rivers, ports, harbours, creeks, shores, and anchoring grounds, in or adjoining sheriffdoms, hold and exercise original jurisdiction in all maritime causes and proceedings, civil and criminal, including such as may apply to persons furth of Scotland of the same nature as that heretofore held and exercised by the High Court of Admiralty."

3. By section 23rd it was enacted "That the finding of caution and using of arrestments heretofore observed in the High Court of Admiralty and all regulations relative thereto, may be enforced in the foresaid courts respectively; and maritime causes may be heard and determined by the Sheriff, according to the same modes and rules which are applicable in the Sheriff Court to causes not maritime, including the mode prescribed in an Act passed in the tenth year of the reign of his late Majesty King George the Fourth, entitled 'An Act for the more effectual recovery of small debts, and for diminishing the expenses of litigation in causes of small amount in the Sheriff Courts in Scotland; and the sentences, interlocutors, and decrees pronounced by Sheriffs in maritime causes shall be subject to review by the Courts of Session

"and Justiciary respectively, in the same way and manner in which sentences, interlocutors, and decrees of Sheriffs in similar causes not maritime, are subject to review but not otherwise. Provided always, that it shall not be competent to the Sheriff to try any crimes committed on the seas, which it would not be competent for that Judge to try if the crime had been committed on land."

4. To shew what were the views entertained by the Judges in the Supreme and Inferior Courts before and after the abolition of the High Court, the following cases may be mentioned :—

(a) The first to be referred to is *Bernard v. Connar*, 11th June, 1811—Morrison's Synopsis, *voce Jurisdiction*, and F.C., —the circumstances of which were these :—An American ship, of which Bernard was master, having put into Campbeltown in the course of a voyage to Belfast, Connar and others of the seamen left the vessel, and when she came to Greenock they there arrested her, and raised an action before the Water Bailie of Clyde (who has Admiralty jurisdiction) for wages and damages on account of maltreatment, and for restitution of articles belonging to them. The Water Bailie sustained the action and allowed a proof, and the proof having been taken he held the claims of the seamen to be well founded, and decerned accordingly. Bernard presented a Bill of Advocation which was reported to the Court by Lord Robertson, upon information, in order to decide upon the point of competency. Among other pleas urged by the seamen was this—that the arrestment which had been used founded the jurisdiction against the shipmaster. The Court sustained the

jurisdiction, Lords Newton and Boyle doubting, as the parties had no domicile in Scotland, and were not resident *animo remanendi*, also because their contract must be interpreted by the laws of America. The Lord Justice Clerk, Polkemmet, and Meadowbank thought, as there had been a contract and a debt incurred "through violation of it, *the parties, having used the known means to found jurisdiction, were entitled to be heard.*"

(b) In a cessio case, *Kennedy v. Muir*, 10th March, 1836, 16 S.D., 990, which was instituted in the Sheriff Court, under the Act 6 and 7 William IV., cap. 56, which extended "the jurisdiction of the Sheriffs in Scotland to such cases," it was pleaded that the Sheriff had no jurisdiction, and could not, under the statute, entertain processes of cessio when any of the creditors resided in England; but the First Division of the Court of Session\* and the five Lords Ordinary† before whom the case was ultimately argued, were unanimous in holding that the Sheriff had such jurisdiction over foreign creditors, and, they said, in their opinion, that, "as there is a large class of mercantile cases (Admiralty "causes) in which, by the 1st William IV., cap. 69, Sheriffs have "an undoubted jurisdiction over foreigners, that example alone is "sufficient to show that Sheriffs ought, even under a literal con- "struction of the above clause (in the cessio act) to have jurisdiction "in cases of cessio." Lord Medwyn—before whom, as Lord Ordinary on the Bills, the case first came from the Sheriff Court—in a note to his Interlocutor, ordering cases, said : "When the jurisdiction of the Admiralty Court as a separate Court was abolished "and transferred to the Court of Session and to the Sheriff Courts, "considering the nature of that Court, having reference chiefly to "foreigners, it was necessary that they should be made subject to "the new jurisdiction, as by the law of nations they had been to

\* Lord President Hope, Lords Gillies, Mackenzie, and Corehouse.

† Lords Fullarton, Cockburn, Moncrieff, Jeffrey, and Cunningham.

"the old and original jurisdiction, and accordingly the jurisdiction  
"is expressly conferred on them."

(c) *Guthrie & Millar v. Kennedy.*—This was an action raised in 1837 before the Sheriff of Ayrshire against "Stewart Kennedy, shipmaster in Belfast, Ireland, sole owner of the sloop or vessel called the 'William and Mary,' of Belfast, presently lying in the harbour of Ayr," concluding for payment of the sum of £90 sterling, "being the balance of the price of the said vessel, which was lately sold by the pursuers to the defender, conform to acknowledgment dated 25th January last, 1837." The will of the summons was "to summon, warn, and charge the said Stewart Kennedy, defender, if within Scotland, personally or at his dwelling-place, on the seventh day next after the date of your citation, and if furth thereof, by delivery of a copy of the libelled precept herein at the Record Office of the Keeper of the Records of the Court of Session at Edinburgh, in terms of the statute thereanent, to compear before me or my substitute within the ordinary court place at Ayr on the sixtieth day after the date of your citation." The execution returned by the officer bore that the defender was summoned personally to appear in Court upon the seventh day next. The summons contained a warrant to arrest, under which the vessel was arrested, and at same time the pursuers gave in a petition for warrant to arrest *jurisdictionis fundandæ causa* which was granted, and the vessel was also arrested under the precept following on that warrant. In the summons, however, no notice was taken of the jurisdiction thereby created. In defence, the defenders urged the following preliminary defences:—1. That the debt libelled was not of a maritime nature. 2. That he was a foreigner, and consequently not amenable to the jurisdiction of an inferior Court; and that although his effects might be competently attached under a warrant *jurisdictionis fundandæ causa* flowing from the

Sheriff, yet the action following thereon could only be raised in the Court of Session.—(Erskine, B. 1, T. 2, sec. 19.) The pursuers pleaded that the action was competently laid, and that the Sheriff had jurisdiction over the defender in virtue of the Act 1 William IV., cap. 69, sec. 22, whereby power was given them “to hold and exercise original jurisdiction in all maritime causes and proceedings, civil and criminal, including such as may apply to persons residing furth of Scotland.” The Sheriff-Substitute “found that the action was competent before the Court under the recent statute conferring original jurisdiction on the Sheriffs of Scotland in all maritime causes and proceedings, and therefore repelled the preliminary defences and sustained the action.” An appeal having been entered for the opinion of the Sheriff, he adhered to the interlocutor, and appended this note to his judgment:—“It would be a great abridgment of the usefulness of the Act 1 William IV., cap. 69, whereby the jurisdiction in maritime causes was conferred on the Sheriff Courts, if the doctrine of the defender was well founded; for it would really withdraw from that jurisdiction all cases where a foreigner (including English and Irish) was a party, and these are perhaps the majority of cases. But the Court of Admiralty formerly had jurisdiction, and it is now transferred to the Sheriffs. The case quoted 13th December, 1828, *Burn v. Purves*, has no application, not being of a maritime nature.”\*

(d) The last case, bearing upon the question of jurisdiction of Sheriffs over foreigners, prior to the passing of the amending statute aftermentioned, was *Morrison v. Munnoch*, 11th July, 1837, D, 1293. The report of it is very short and is in these terms, viz.:—“A ‘party domiciled in England contracted a maritime debt to the ‘amount of £14 for ship furnishings made in Leith by a ship ‘chandler there. The ship chandler used arrests (in the

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\* From a Newspaper Report.

"hands of a debtor residing in the shire of Edinburgh) to found jurisdiction, and raised an action for payment before the Court of Session: Question, whether such action, the sum being under £25, was competent in that court or ought to have been brought "in the first instance before the Sheriff of Edinburgh, in respect "of the provisions of the statute 1 Will. IV., cap. 69, s. 21 and "22, although the debtor resided abroad. In the circumstances "above stated, the Lord Ordinary (Fullarton) dismissed the action "as incompetent. The pursuer presented a reclaiming petition, "and the court ordered minutes of debate, after which the parties "compromised the case."

5. Doubts having arisen regarding the extent of the jurisdiction conferred upon the Sheriffs by the Act William IV., cap. 69, it was enacted and declared in 1838 by the Act 1 and 2 Victoria, cap. 119, section 21, "That the said recited Act shall be construed and held to mean that the powers and jurisdictions formerly competent to the High Court of Admiralty of Scotland in all maritime causes and proceedings civil and criminal shall be competent to the said Sheriffs and their substitutes, provided the Defender shall, upon any legal ground of jurisdiction, be amenable to the jurisdiction of the Sheriff before whom such causes or proceedings may be raised: And provided also that it shall not be competent to the Sheriff to try any crime committed on the seas which it would not be competent for that judge to try if the crime had been committed on land."

6. The following cases have been decided since the passing of the amending Act:—

(a) *Bruhn v. Grunwaldt*, 17th December, 1863, 2 Macph. 335.—In a maritime action raised in the Court of Session by a Prussian seaman, for £4 18s 3d of wages, against the master and owner of a Prussian ship, which had been arrested *jurisdictionis fundanda causa* upon a precept of the Sheriff of Forfarshire, held (by Lord Ordinary, and acquiesced in) that the defender was amenable to the jurisdiction of the Sheriff, in the sense of sect. 21 of 1 and 2 Vict., c. 119, in respect of the arrestment, and that this being a maritime action for a sum under £25 the action was incompetent in the Court of Session. The nature of this case was thus stated by the Lord Ordinary—"This is an action by a seaman against the master and owner of a Prussian ship, now lying arrested in the harbour of Dundee, for £4 18s 3d of wages. Such an action is indisputably one of the maritime class, and this was assumed by both parties in the argument. The defender is a foreigner not domiciled in this country, and he has pleaded that this Court has no jurisdiction to entertain the action, and that it could be competently brought in the Sheriff Court of Forfarshire only. In support of this preliminary plea, which the Lord Ordinary has sustained, the defender founded on the statutes 1 William IV., c. 69; 1 and 2 Vict., c. 119; and 17 and 18 Vict., c. 104." The LORD ORDINARY (Ormidale) pronounced the following interlocutor:—"Having heard the counsel for the parties on the defender's first plea in law, to the effect that by statute the jurisdiction of this Court is excluded, and considered the argument and proceedings, Sustains said plea, dismisses the action, and decerns: Finds the defender entitled to expenses; allows an account thereof," &c.

NOTE.—. . . . By the first of these statutes 1 William IV., c. 69, the High Court of Admiralty was abolished, and its

jurisdiction transferred to this, the Court of Session, and the Sheriff Courts. By sect. 21 it is enacted that the Court of Session shall exercise jurisdiction in all maritime causes in regard to which jurisdiction was formerly exercised by the Admiralty Court, provided always that all such causes not exceeding the value of £25 sterling shall be instituted and carried on in the first instance before an inferior Court. And by sect. 22 it is enacted that the Sheriffs of Scotland and their Substitutes shall, within their respective sheriffdoms, "hold and exercise original jurisdictions in all maritime causes and proceedings, civil and criminal, including such as may apply to persons residing furth of Scotland, of the same nature as that heretofore held and exercised by the High Court of Admiralty." And by sect. 21 of 1 and 2 Vict., c. 119, which proceeds on the statement that there were doubts regarding the extent of the jurisdiction conferred by the previous statute on the Sheriffs, it is enacted that the "powers and jurisdictions formerly competent to the High Court of Admiralty of Scotland in all maritime causes and proceedings, civil and criminal, shall be competent to the said Sheriffs and their Substitutes, provided the defendant shall upon any legal ground of jurisdiction be amenable to the jurisdiction of the Sheriff before whom such cause or proceeding may be raised." It is obvious from these statutory enactments that such an action as the present was competent in the Sheriff Court only, provided the defendant was "upon any legal ground of jurisdiction amenable to the jurisdiction of the Sheriff." That the defendant was made amenable to the jurisdiction of the Sheriff of Forfarshire is thought to be clear, in respect of his ship having been arrested *ad fundandam jurisdictionem* before this action was raised, on the warrant or precept of that Sheriff. —*Bernard v. Connar*, 11th June, 1811, F.C. Indeed, before the explanatory statute last referred to was passed, a similar action was dismissed by Lord Fullerton, in respect of want of jurisdiction in this Court—*Morrison v. Munnoch*, 11th July, 1837, 15 Sh. 1293; and the circumstances of the Inner

House so far entertaining doubts on the subject as to order written argument, and no decision affirming or altering Lord Fullerton's interlocutor having been pronounced in consequence of the case having been compromised, are now, after the passing of the 17 and 18 Vict., c. 104, for the express purpose of removing the previous doubts, of comparatively little importance. The Lord Ordinary being, on the grounds now adverted to, of opinion, as well with reference to what he considers to be the true construction of the statutory enactments as to authority, that the defender's first plea of want of jurisdiction is well founded, has sustained it, and dismissed the action.

(b) *Price v. Owen*, 11th February, 1865 (newspaper report).—The owners of the schooner *Lady Mary* claimed from the owners of the *Amanda* various sums, amounting in all to about £7, as the cost of certain repairs which had been rendered necessary by the two vessels having come into collision when being towed down Belfast Lough, on their voyage to Ardrossan. When the *Amanda* arrived there she was attached by arrestment *jurisdictionis fundandæ causa*, and this action was then raised against the master of the *Amanda*, who pleaded that the sum sued for being under £25, the action was incompetent in the Court of Session. The pursuer answered that the defender, being a foreigner, was amenable to no jurisdiction, even when arrestment had been used to found it, except that of the Court of Session as the *commune forum*. The question turned on the meaning of section 22 of 1 William IV., cap. 69, abolishing the Court of Admiralty, and transferring its jurisdiction to the Court of Session and the Sheriff Court. The statute enacts that the Sheriff "shall hold and exercise original jurisdiction in all maritime causes and proceedings, civil and criminal, including such as may apply to persons residing furth of Scotland." But by 1 and 2 Vict., cap. 119, sect. 21, it is declared that this shall be construed to mean that the powers formerly

competent to the High Court of Admiralty shall be vested in the Sheriff Court, "provided the defender shall on any legal ground of objection be amenable to the jurisdiction of the Sheriff before whom such cause or proceedings may be raised." The Lord Ordinary (Lord Barcaple) gave effect to the defender's plea, and dismissed the action, adding the following note:—"NOTE.—Reference was made at the debate to the cause of Bruhn *v.* Grunwaldt, 17th December, 1863, II. M'P., 335, where the judgment of Lord Ormidale in the Outer House was acquiesced in. The Lord Ordinary concurs in the grounds on which that judgment was pronounced, as explained in the note of Lord Ormidale. The present pursuer argued that it was ill decided, because arrestment *jurisdictionis fundandæ causa* does not in the general case give jurisdiction to the Sheriff against persons residing furth of Scotland—Burn *v.* Purves, 13th December, 1828, VII., s. 194. The Lord Ordinary thinks that section 22 of 1 William IV., cap. 69, having in express terms given jurisdiction to the Sheriff in maritime causes against persons residing furth of Scotland, the subsequent declaratory enactment in section 21 of 1st and 2d Vict., cap. 119, cannot be held to take away that jurisdiction, but only to regulate it. The former enactment gave the Sheriff generally jurisdiction in maritime causes against foreigners which he has not in other cases, thus putting him in this class of cases on the same footing as to jurisdiction with the Court of Session. The principle of the *commune forum* having been thus done away with in maritime cases, and it being on that principle that effect is in general refused to arrestment *jurisdictionis fundandæ causa*, as making a foreigner amenable to the jurisdiction of the Sheriff, such an arrestment should in that class of cases constitute a legal ground of jurisdiction in the Sheriff Court against a foreigner, just as it does in the Court of Session. Thus the effect of the explanatory enactment of the 21st section of 1 and 2 Vict., cap. 119, in the case of foreigners, is merely that the jurisdiction conferred upon

the Sheriff by the previous statutes shall not be exercised against them, unless they are made amenable to it by arrestment used for that purpose. The provision in the following section 22 as to caution *judicatum solvi* confirms this view, as it is implied that such caution may be required by the Sheriff from defenders domiciled out of Scotland, showing that he has jurisdiction against persons in that situation."

7. By section 24 of 1 William IV., cap. 69, it is enacted that "Where counties are separated from each other by a river or by a firth or estuary, the Sheriffs of the counties adjoining to the sides thereof shall have a cumulative jurisdiction over the whole intervening space so occupied by water; providing always that the pursuer of all civil causes shall, where such cumulative jurisdiction applies, bring the cause before the Sheriff of the county within which the Defender may reside; and that where there are several defenders in the same cause residing in different counties, the same rules shall apply in regard to the citation of the whole of such Defenders before the same Sheriff Court which are observed in similar circumstances with respect to causes not maritime; and it is provided farther that Sheriffs shall respectively have power to remit such causes from their own Court to that of another Sheriff *ob contingentiam*, or for other sufficient cause."

8. A question as to the extent of this cumulative

jurisdiction arose some years ago in the Sheriff Court at Greenock, and may be mentioned for the purpose of illustrating its operation. A party had applied and obtained from the Sheriff-Substitute at Greenock a warrant against the Master of a vessel, which was alleged to be "lying in the harbour of Greenock," interdicting him from removing her out of the Sheriff's jurisdiction. The vessel it appeared, however, just before the petition was presented, had been towed from Greenock Harbour to the Gareloch in the Clyde, where the interdict was served upon the Master. An objection was taken to the competency of the action on the ground that as the Gareloch, although an arm of the Clyde, was bounded on both sides by land forming parts of the county of Dumbarton, the Sheriff of that county alone had jurisdiction over vessels or persons in the loch. The Sheriff-Substitute intimated his opinion to be that the objection was fatal; but the action having been compromised, no decision was pronounced.

9. By the Act 17 and 18 Vict., c. 104, section 521, it is enacted that "in all cases where any district within which any Court or Justice of the Peace or other Magistrate has jurisdiction, either under this Act or under any other Act, or *at common law*, for any purpose whatever, is situate on the coast of any sea, or abutting on or projecting into any bay,

channel, lake, river, or other navigable water, every such Court, Justice of the Peace, or Magistrate, shall have jurisdiction over any ship or boat being on or lying or passing off such coast or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat, or for the time belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such Court, Justice, or Magistrate."

III.—THE SHERIFF HAS ALSO HAD JURISDICTION CONFERRED ON HIM IN MARITIME CAUSES BY SEVERAL OTHER STATUTES.

1. By the Sheriff Small Debt Act, 1 Victoria, cap. 41, sec. 2, it is enacted "That it shall be lawful for "any Sheriff in Scotland, within his county, to hear, "try, and determine in a summary way, as more "particularly hereinafter mentioned, all civil causes "and all prosecutions for statutory penalties, *as well* "*as all maritime civil causes and proceedings that* "may be competently brought before him, wherein "the demand or penalty in question shall not exceed "the value of Eight pounds six shillings and eight- "pence sterling, exclusive of expenses and fees of extract." The maximum sum has been raised to £12 by the Act 16 and 17 Victoria, cap. 80, section 26.

2. By the Merchant Shipping Act, 1854, 17 and 18 Victoria, cap. 104, section 188, it is enacted that any seaman, or apprentice, or any person duly authorised on his behalf, may sue, in a summary manner, before any two Justices of the Peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is, or resides, or in Scotland, either before any such Justices or before the Sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice, not exceeding Fifty Pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable, and every order made by such Justices or Sheriff in the matter shall be final.

3. By section 581 of the same Act it is enacted "That "in Scotland all prosecutions, complaints, actions, or "proceedings under this Act, other than prosecutions "for felonies or misdemeanours, may be brought in a "summary form before the Sheriff of the County, or "before any two Justices of the Peace of the County "or Burgh where the cause of such prosecution or "action arises, or where the Offender or Defender "may be for the time."

4. By section 527 of same Act, it is enacted that "whenever any injury has in any part of the world, been caused to any property belonging to Her Majesty, or to any of Her Majesty's subjects, by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the judge of any Court of record in the United Kingdom, or for the judge of the High Court of Admiralty, or in Scotland, the Court of Session, or the Sheriff of the County within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly."

5. By the 528th section it is enacted that "in any

case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any Commissioned Officer, on full pay, in the military or naval service of Her Majesty, or any British Officer of Customs, or any British Consular Officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such Officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds."

6. By section 529 it is enacted that "in any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding."

7. By section 460 of the said Act it is enacted that "disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been

determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise, then, if the sum claimed does not exceed two hundred pounds, such dispute shall be referred to the arbitration of any two Justices of the Peace, resident as follows, that is to say:—In case of wreck, resident at or near the place where such wreck is found: In case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises. But if the sum claimed exceeds two hundred pounds, such dispute may, with the consent of the parties, be referred to the arbitration of such Justices as aforesaid, but if they do not consent, shall in England be decided by the High Court of Admiralty of England, in Ireland, by the High Court of Admiralty of Ireland, and in Scotland, by the Court of Session, subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds,

they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges, or expenses incurred by them in the prosecution of their claim.

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salved, or of their respective agents."

8. By the Act 25 and 26 Vict., cap. 63, it is enacted by section 49, that the provisions contained in the eighth part of the principal Act, 17 and 18 Vict., cap. 104, for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows, that is to say:—

(1) Such provisions shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the principal Act.

(2) It shall be competent for any Stipendary Magistrate, and also in England for any County Court Judge, in Scotland for the Sheriff or Sheriff-Substitute of any County, and in Ireland for the Recorder of any Borough in which there is a Recorder, or for the Chairman of Quarter Sessions in any County to exercise the same jurisdiction in salvage cases as is given to two Justices.

IV.—ADMIRALTY CAUSES AND PECULIARITY IN FORMS OF PROCEDURE.

1. Under the title "Admiralty Causes" were comprehended questions of Charter Party, Freights, Salvages, Wrecks, Bottomries, Policies of Insurance, and in general all contracts concerning the lading or unlading of ships, or any other matter to be performed within the verge of the Admiral's jurisdiction; and all actions for delivery of goods sent on shipboard, or for recovering their value, or where the subject of the suit consists of goods transported by sea from one port to another. In all these, as well as in other cases plainly of a maritime nature, such as for seamen's wages, the sale of a vessel, &c., the former Court of Admiralty had jurisdiction. As to what are maritime causes, reference is made to Shand's Practice of the Court of Session, Vol. I. p. 413.

2. The Admiralty Court had also jurisdiction in cases between merchants and others beyond seas and between them and persons in Scotland arising from contracts or otherwise relating to commerce, and actions upon Bills of Exchange were from time immemorial found competent to the High Court of Admiralty as being in *re mercatoria*. In a case which depended before the Court of Session, it having been objected to the competency of the Admiral's arrestment founded upon an inland bill, the Lords

sustained the arrestment, Anderson v. Turnbull, 19th July, 1706. Morr. 7509.\*

3. Formerly there were certain peculiarities in the forms of proceedings in maritime causes. In these (though not in the cases mentioned in the preceding paragraph), before the defender was permitted to state his defence, the pursuer was entitled to insist on the defender lodging a bond of caution, *de judicio sisti et judicatum solvi*, in the following form, viz.:—

I, A. B., do hereby judicially enact, bind, and oblige myself, my heirs, executors, and successors whomsoever as cautioner, surety, and full debtor, acted in the court books of the Sheriffdom of [redacted], and that *de judicio sisti et judicatum solvi*, for the defender in an action at present depending before the Sheriff of said Sheriffdom at the instance of C. D., pursuer, against E. F., defender; and I, the said E. F., hereby become bound for my said cautioner's relief in the premises: And we consent to the registration hereof in the books of Council and Session or of the said Sheriffdom, &c., &c.

4. On lodging this bond, the defender might, if he thought proper, also lodge his defences. But he was not bound to do so, until the pursuer found caution *de damnis et impensis* in the following form, viz.:—

I, A. B., do hereby judicially enact, bind, and oblige myself, my heirs, executors, and successors, whomsoever, as cautioner,

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\* Boyd's Judicial Proceedings—p. 5.

surety, and full debtor, acted in the Sheriff Court Books of the Sheriffdom of                   *de damnis et impensis*, for the pursuer in the action at present depending before the Sheriff of said Sheriffdom, at the instance of C. D., Pursuer, against E. F., Defender, and I, the said C. D., Pursuer, hereby become bound for my said cautioner's relief in the premises. And we, the said A. B. and C. D., consent, &c.

5. Although the Pursuer did not insist on the Defender finding caution, the Defender was still entitled to insist that the Pursuer should do so.  
*Leitch v. Thomson*, 3d June, 1834, 12 S. 677.

6. This right to demand caution was modified and restricted by the Act 1 and 2 Victoria, cap. 119, section 22, by which it is enacted "That in maritime causes or proceedings raised or brought before any Sheriff Court in Scotland, caution *judicatum solvi* or *de damnis et impensis* shall not be required in any such cause or proceeding from any party who shall be domiciled in Scotland, any law or practice to the contrary notwithstanding, unless the judge shall require it on special grounds to be stated in the interlocutor requiring the same or a note annexed thereto."

7. This enactment did not establish any new law or practice as to caution, but merely modified that which existed; the right to demand caution and the

conditions on which it might be demanded, remaining the same, subject, however, to the above modification. The finding of caution in such actions in the Court of Session was abolished by the Act 13 and 14 Vict., cap. 36, section 24.

8. By the Sheriff Court Act of 1853, 16 and 17 Victoria, cap. 80, section 21, it is enacted that "the procedure in consistorial and maritime causes shall be as nearly as may be the same as is herein-before provided with reference to ordinary actions; and as caution *judicatum solvi* or *de damnis et impensis* is not exigible in ordinary actions, it may be doubted whether the exacting of caution in maritime causes is now competent."

#### V.—IN WHAT COURT MARITIME ACTIONS SHOULD BE RAISED, AND FORMS OF PROCEEDINGS THEREIN.

##### PERSONAL ACTIONS.

1. When the defender, even though he be a foreigner, has acquired a domicile within the Sheriff's territory by residence for forty days, there can be no doubt as to the Sheriff's jurisdiction over him in any personal action of a kind that is competent in the Sheriff Court. *Pirie & Sons v. Warden*, 20th Feb., 1867, 5 Macph. 497.

2. And even where the defender (though a foreigner)

has not been forty days within the Sheriff's territory, if he has, while therein, entered into a contract, or has contracted to fulfil therein a contract which he has elsewhere entered into, he is subject to the jurisdiction of the Sheriff in relation to such contract so far as at the time enforceable. But to mention the most common case, if a foreigner gets his ship repaired or supplied with stores within the Sheriff's territory, the cost of which repairs or supplies is to be paid for before the sailing of the vessel, he is subject to the jurisdiction of the Sheriff; but in such cases the defender must be personally cited while within the jurisdiction. *Sinclair v. Smith*, 17th July, 1860, 22 D, 1475. *Pirie & Sons v. Warden, supra*, and Lord Mackenzie's opinion in *Ranger v. Churchill*, 15th January, 1840, 2 D, 316.

3. The first of these cases was an action of damages for breach of promise of marriage, in which the pursuer averred that she, a native of Scotland had, in 1853, become engaged to marry the defender, a native of and then resident in Scotland. He had afterwards gone to reside in England, but on his coming back to Scotland, and after he had been resident therein for a week, he having been cited personally, it was held that the defender being personally cited was liable to the jurisdiction of the Scotch Courts, *ratione contractus*. In delivering his opinion, Lord President

Inglis (then Lord Justice Clerk) said (p. 1481), "I am of opinion that, according to the law of Scotland, adopting and applying principles of general jurisprudence, a party to a contract may be sued for a breach of contract *in loco contractus*, if he be found within the country, and duly convened in an action before a tribunal of that country."

4. In Pirie & Son's case Lord President Inglis said (p. 500), "if you find a man in the place where, and at the time when, he has contracted to do a certain thing, you may call in the aid of the local court to compel performance. Why the law should not, in a matter of contract, be enforced quite as well by the Sheriff as by the Supreme Court, I do not see, and I think that if it were to be determined that the Sheriff's jurisdiction was excluded in all cases where the defendant was a foreigner, the result would be in many cases a practical denial of justice."

5. In Ringer *v.* Churchill's case, Lord Mackenzie said (p. 316), "residence of forty days, by our law, gives a general domicile for citation and action against him to the husband. But to many actions he must be liable on a much shorter residence; and indeed liable by his personal presence for however short a time. As, for instance, to an action of aliment of a child who is with him; to an action of restitution of

a moveable newly seized by him or hired; to payment of things newly bought by him for ready money, &c. If cited personally, there seems no doubt a man must answer to such actions though he have not been twenty-four hours in the country where the action arises."

No. 1. Form of petition for payment of an account for repairs to a vessel before the Sheriff Court of defenders' domicile.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

A. B., Shipbuilder in Greenock, Pursuer;

**AGAINST**

C. D., Shipowner in Greenock, and sole owner of the  
ship or vessel "Hercules," of Greenock, Defender:

The above-named pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant a decree against the above-named defender ordaining him to pay to the pursuer the sum of one hundred and fifty pounds sterling, and the lawful interest thereof from \_\_\_\_\_ till payment, together with the expenses of process; and also in the meantime, and on the dependence, to grant warrant to Officers of Court, to lawfully fence and arrest all and sundry ships, and shares of ships, and barks, boats, goods, gear, debts, effects and sums of money, and all other moveable effects,

belonging or addebted to the defender, wherever or in whose hands soever the same may be, within the jurisdiction of the Sheriff of Renfrew and Bute, and to take the sails, rudders and anchors from the said vessels (the same being always in a safe harbour) all to remain under sure fence and arrestment at the pursuer's instance, aye and until sufficient caution and surety be found acted in the books of the said Sheriff Court that the same shall be made forthcoming to the pursuer as accords of law; and if need be, to charge all Judges and Magistrates, Officers of Her Majesty's Army and Navy, and others whom it effeirs, to concur with the said Officers of Court in putting the said warrant to all due and lawfule execution.

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#### CONDESCENDENCE.

1. The defender is justly addebted and resting owing to the pursuer the sum of one hundred and fifty pounds sterling for repairs made by the pursuer upon the ship or vessel "Hercules," of Greenock, belonging to the defender, and for furnishings made to her, on the order and employment of the defender, conform to account, commencing the \_\_\_\_\_ and ending the \_\_\_\_\_, herewith produced and herein referred to.
  
  2. The pursuer has required the defender to pay the said sum, but he refuses, at least delays to do so.
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#### PLEA IN LAW.

The defender being resting owing to the pursuer the sum sued for, the latter is entitled to obtain decree against the defender as prayed for:

#### *IN RESPECT WHEREOF.*

NOTE.—To be signed by pursuer's law agent, who will add his address.  
See 39 and 40 Vict., cap. 70, Schedule A—Note.

## WARRANT ON PETITION.

*Greenock, \_\_\_\_\_, 187—.*—The Sheriff-Substitute of Renfrew and Bute grants warrant to cite the defender upon an inducæ of seven days, by serving him with a copy of the foregoing Petition, Condescendence, and Plea in Law, and of this Warrant, and ordains the defender, if he intends to shew cause why the prayer of the Petition should not be granted, to lodge in the hands of the Clerk of Court at Greenock a notice of appearance within the inducæ of citation hereon, under certification of being held as confessed, and grants warrant to arrest and dismantle on the dependence as craved (the vessel being always in a safe harbour).

*Note.—If the warrant to arrest and dismantle is granted, the warrant should be signed by the Sheriff.*

No. 2. Form of petition for payment of an account for repairs to a foreign vessel, against the foreign master brought before the Sheriff Court of the place where the repairs were contracted to be and have been made, and where the cost was to be paid.

## PETITION.

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In the Sheriff Court of Renfrew and Bute at  
Greenock,

T. Jones and Company, Ship Carpenters and Joiners  
in Greenock, Pursuers;

## AGAINST

\_\_\_\_\_, residing in Greenock, master and owner of the ship or vessel "K\_\_\_\_ C\_\_\_\_," of G\_\_\_\_\_, in the United States of America, or as master of the said vessel, and as such representing the owner or owners of the said vessel, Defender.

The above-named pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant a decree against the above-named defendant, ordaining him to pay to the pursuers the sum of \_\_\_\_\_ sterling, and the lawful interest thereof, from the date of citation to this action until payment, together with the expenses of process: as also in the meantime to grant warrant to officers of court to lawfully fence and arrest all goods, debts, sums of money and effects, and in particular the said ship or vessel "K—— C——," belonging or due to the defendant, within the jurisdiction of the Sheriff of Renfrew and Bute, all therein to remain under sure fence and arrestment at the instance of the pursuers, aye and until sufficient caution and surety be found acted in the books of the said Sheriff Court of Renfrew and Bute that the same shall be made forthcoming to the pursuers, as accords of law.

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#### CONDESCENDENCE.

1. The pursuers are ship carpenters and joiners in Greenock, and the defender, at the time of the employment of the pursuers, and the contraction of the debt after-mentioned was, and still is, the master and owner of the said ship or vessel "K—— C——," of G——, in the United States of America, or otherwise, was, and still is the master of the said vessel, and as such represented and still represents the owner or owners thereof: which vessel is lying in the Harbour of Greenock [where the defender is at present resident.] [If the defender has been forty days in jurisdiction, add]—The defender has been resident in Greenock, and within the jurisdiction of the Sheriff of Renfrew and Bute for upwards of forty days.

2. In the months of September and October, 1876, the pursuers were, at Greenock, employed by the defender to make, and they accordingly did make at Greenock, certain repairs upon and furnishings to the said vessel. The said repairs and furnishings are specified in an account commencing the 5th and ending the 28th days of October, 1876, and partly in three relative written offers or estimates made at Greenock to the defender by the pursuers, two of which are dated the 30th day of September, and the third is dated the 17th day of October, 1876: and which written offers or estimates the defender accepted or agreed to in Greenock. The said account, and copies of the written offers or estimates are herewith produced and herein referred to.

3. For the said repairs and furnishings, the defender is justly indebted and resting owing to the pursuers the sum of \_\_\_\_\_ sterling, conform to the said account and relative offers or estimates. The said sum was and is payable in Greenock; but though the defender has been required to pay the same, he delays to do so.

#### PLEA IN LAW.

The defender being resting owing to the pursuers the sum sued for, the latter are entitled to decree against him as prayed for:

#### *IN RESPECT WHEREOF.*

NOTE.—To be signed by pursuer's law agent, who will add his address.  
See 39 and 40 Vict., cap. 70, schedule A—Note.

#### WARRANT ON PETITION.

*Greenock, \_\_\_\_\_ December, 1877.*—The Sheriff Substitute of Renfrew and Bute grants warrant to cite the defender, \_\_\_\_\_, upon an inducæ of seven days, by serving him with a copy of the foregoing Petition, Condescendence, Plea in Law, and of

this Warrant, and ordains the defender, if he intends to shew cause why the prayer of this Petition should not be granted, to lodge in the hands of the Clerk of Court at Greenock, a notice of appearance within the inducere of citation hereon, under certification of being held as confessed, and grants warrant to arrest on the dependence as craved.

— Sh. Clk. Dep. of Renfrewshire.

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#### OFFICER'S EXECUTION.

This Petition, served by me, —, Sheriff Officer, upon — defender, by delivering to him personally apprehended in Greenock, a full double thereof, and of the warrant thereon, having a just copy of service and citation subjoined in presence of —, residenter in Greenock, this nineteenth day of December, eighteen hundred and seventy-six years.

— Sheriff Officer.

—, Witness.

6. When, however, the defender is resident out of Scotland, as the Supreme Court is the Commune Forum of foreigners, the action should be raised in the Supreme Court.\* Before doing so, however, jurisdiction must be founded by arrestment of the defender's moveable property. For this purpose, letters of

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\* In *Pirie v. Warden* (*supra*), the Lord President said (p. 500), "for these (foreigners) it is true the Court of Session is the sole *forum*, and it is for this reason that a defender who is out of the country can only be cited edictally, which cannot be done by warrant of the Sheriff;" but this reason does not now exist as the Sheriff Court Act, 39 and 40 Vict., cap. 70, section 9, confers such power to cite edictally.

arrestment *ad fundandam jurisdictionem* may be obtained from the Supreme Court, or a precept from the Sheriff Court.\*

7. To obtain such precept it is now usual to present a petition to the Sheriff asking therefor. The petition sets forth the grounds upon which the claim about to be sued for is founded, and the precept will narrate the grounds as in the following forms:—

No. 3. Form of petition and precept to arrest *jurisdictionis fundandæ causa* against a foreigner for a debt not contracted within the Sheriff's territory, where the action is to be raised in the Court of Session.

#### PETITION.

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In the Sheriff Court of \_\_\_\_\_ at Glasgow,

J—— P—— and Company, Sailmakers in Greenock,  
and C—— P——, Sailmaker there, the sole partner  
of that Company, Pursuers;

#### AGAINST

J—— D—— W——, Shipbuilder, N——, Pem-  
brokeshire, Defender:

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\* Since the above was written, the Act 40 and 41 Victoria, cap. 50, has been passed, conferring, by section 8, jurisdiction over a foreigner in an action that would be competent against a Scotchman subject to the jurisdiction of the Sheriff, provided a ship or other vessel belonging to such foreigner, or of which he is part owner or master, shall have been arrested within the Sheriffdom. The Form of Petition and Precept for such a case has in consequence been added. See Form No. 5.

The above-named pursuers submit to the Court the Condescendence and note of Plea in Law hereto annexed, and pray the Court

To grant warrant for precept of arrestment *jurisdictionis fundandæ causa*, authorising the arrestment within the jurisdiction of the Sheriff of \_\_\_\_\_ of all goods, effects, debts, and sums of money, therein situated, belonging or addebtred to the defender, all therein to remain under sure fence and arrestment, at the pursuers' instance; *jurisdictionis fundandæ causa.*

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#### CONDESCENDENCE.

1. The defender is justly addebtred and resting owing to the pursuers the sum of five hundred and forty-six pounds sterling, for sails and other furnishings sold and delivered by the pursuers to the defender upon his order and employment, conform to account, dated the twenty-seventh day of June, eighteen hundred and seventy-seven, and relative offer or estimate by the pursuers to the defender, dated the 14th day of October, eighteen hundred and seventy-six, and acceptance thereof by the defender, dated second November, eighteen hundred and seventy-six, herewith produced and herein referred to, and held as repeated, *brevitatis causa.*
2. The defender is a foreigner, and has no domicile in Scotland; but he has goods, effects, debts, and sums of money belonging and addebtred to him, within the jurisdiction of the Sheriff of \_\_\_\_\_ which he intends to withdraw to the prejudice of the pursuers.
3. The pursuers intend to raise an action before the Lords of Council and Session against the defender for payment of the said debt; but it is necessary before doing so that jurisdiction be founded by arrestment, as prayed for.

**NOTE OF PLEA IN LAW.**

The pursuers being about to institute an action before the Lords of Council and Session against the defender for payment of theforesaid debt, but before doing so being bound to found jurisdiction, by arrestment, against the defender, the pursuers are entitled to obtain a warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, as prayed for in the foregoing petition:

***IN RESPECT WHEREOF.***

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**PRECEPT.**

\_\_\_\_\_, Esquire, Advocate, Sheriff of \_\_\_\_\_, to Officers of Court jointly and severally: WHEREAS it is shewn to me by J——P—— and Company, Sailmakers in Greenock, and C—— P——, Sailmaker there, the sole partner of that Company, Pursuers—That upon the \_\_\_\_\_ day of July, eighteen hundred and seventy-seven, they presented to me a petition at their instance against J——D—— W——, Shipbuilder, N——, Pembrokeshire, Defender, in which Petition the above-named pursuers prayed the Court to grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment within my jurisdiction of all goods, effects, debts, and sums of money therein situated belonging or addebted to the defender, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*: And in the Condescendence annexed to the said Petition it is narrated—That the defender is justly addebted and resting owing to the pursuers the sum of five hundred and forty-six pounds sterling, for sails and other furnishings sold and delivered by the pursuers to the defender upon his order and employment, conform to account dated the twenty-seventh day of June, eighteen

hundred and seventy-seven, and relative offer or estimate by the pursuers to the defender, dated the fourteenth day of October, eighteen hundred and seventy-six, and acceptance thereof by the defender, dated the second November, eighteen hundred and seventy-six, produced with the said Petition, and therein and herein referred to, and held as repeated *brevitatis causa*: That the defender is a foreigner and has no domicile in Scotland, but he has goods, effects, debts, and sums of money, belonging and addebtied to him within my jurisdiction, which he intends to withdraw to the prejudice of the pursuers: That the pursuers intend to raise an action before the Lords of Council and Session against the defender for payment of the said debt; but it is necessary before doing so that jurisdiction be founded by arrestment, as prayed for in said Petition: That having considered the said Petition, with the Condescendence and Note of Plea in Law thereto annexed, my Substitute at \_\_\_\_\_, on the \_\_\_\_\_ day of July, eighteen hundred and seventy-seven, granted warrant for Precept of Arrestment, *jurisdictionis fundande causa*, authorising arrestment, all as prayed for in said Petition: Herefore, it is my will, on sight hereof, ye pass and lawfully fence and arrest all goods, effects, debts, and sums of money situated within my jurisdiction belonging or addebtied to the defender, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundande causa*.

Given and subscribed by the Clerk of Court at \_\_\_\_\_, the \_\_\_\_\_ day of July, eighteen hundred and seventy-seven.

No. 4. Form of petition and precept to arrest *juris. fund. causa* against owners of a foreign vessel for damages arising out of a collision, where action is to be raised in Court of Session.

## PETITION.

In the Sheriff Court of Renfrew and Bute at Greenock,

Agostino Chichizola, master and owner of the barque "Argonauta," of Genoa, presently lying in the harbour of Glasgow, and —— his mandatory, Pursuers;

## AGAINST

J—— B—— and A—— P——, both merchants of the City of Dublin, sole registered joint owners of the steamer "Lord Gough," of Dublin, presently lying in the harbour of Greenock, Defenders:

The above-named pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment within the jurisdiction of the Sheriff of Renfrew and Bute, of all goods, effects, and debts, and in particular the said steamer "Lord Gough," therein situated, belonging or addebtied to the defenders, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

## CONDESCENDENCE.

1. The principal pursuer, Agostino Chichizola, is master and owner of the barque "Argonauta," of Genoa, which is now lying in the harbour of Glasgow.
2. The defenders are the sole registered joint owners of the said steamer "Lord Gough" of Dublin, which is presently lying in the harbour of Greenock.

3. On the 23d day of November, 1876, shortly before three o'clock A.M., or about that time, while the said barque was coming up the South or Saint George's Channel, and about mid channel, off the Copelands, in prosecution of her voyage from Frabentos in the River Plate, bound for Glasgow (for which port she had got orders at Falmouth) with a cargo of meat, meal, and bone-meal in bags, she was run into and struck on the stem and bow by the said steamer "Lord Gough," whereby the said barque had her stem and cutwater broken and carried away, her apron broken, her planks on the bow stove in and damaged, the jib boom carried away, all the head sails, rigging, and gear torn and destroyed, and other damage was caused to the said barque in her hull, spars, sails, and rigging, and she was caused to make a great deal of water.

4. After the said collision the said steamer did not come to the assistance of the said barque.

5. After the said collision the said barque stood for the land on the Scottish coast till she was fallen in with by a tug steamer which, on account of the damaged condition of the said barque, was engaged to tow her to her destination. After the wreck of the spars, sails, and rigging at the bow, was got cleared away, the tug steamer took the said barque in tow and towed her to Glasgow, where she arrived on the night of the day on which the collision occurred.

6. In consequence of the said collision, the said barque will require to go into dock for repairs, and during the execution of such repairs she will be prevented from taking new employment or setting out on a new voyage.

7. The loss and damages suffered and sustained, and to be suffered and sustained by and through the said collision will not be less than the sum of £2,500 sterling.

8. The said collision was occasioned solely by and through the

violation of the rules of navigation, and the negligence, mismanagement, and fault on the part of those on board and in charge of the said steamer, "Lord Gough," at the time, for whom the defenders are responsible.

9. At the time of the said collision, the said barque had her side lights properly set and burning brightly, and a good look-out was being kept on board of her.

10. The defenders are foreigners, and have no domicile in Scotland, but they have goods, effects, and debts, and particularly the said steamer "Lord Gough," belonging and addebtied to them, within the jurisdiction of the Sheriff of Renfrew and Bute, which they intend to withdraw to the prejudice of the pursuers.

11. The pursuers intend to raise an action before the Lords of Council and Session against the defenders for payment of the said loss and damages; but it is necessary before doing so that jurisdiction be founded by arrestment, as prayed for.

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#### NOTE OF PLEA IN LAW.

The pursuers being about to institute an action before the Lords of Council and Session against the defenders for payment of theforesaid loss and damages, but being bound before doing so to found jurisdiction against them by arrestment, the pursuers are entitled to have warrant granted for Precept of Arrestment, *jurisdictionis fundandæ causa*, as prayed for:

#### *IN RESPECT WHEREOF.*

*Greenock, —— December, 1876.—The Sheriff-Substitute having considered the foregoing Petition, with the Condescendence and Note of Plea in Law thereto annexed, grants warrant for Precept of Arrestment, jurisdictionis fundandæ causa, authorising arrestment, all as prayed for in said Petition.*

## PRECEPT.

Patrick Fraser, Esquire, Advocate, Sheriff of Renfrew and Bute, to Officers of Court jointly and severally: WHEREAS it is shown to me by Agostino Chichizola, master and owner of the barque "Argonauta," of Genoa, presently lying in the harbour of Glasgow, and \_\_\_\_\_ his mandatory, Pursuers—That upon the \_\_\_\_\_ day of December, 1876, they presented to me a Petition at their instance against J—— B—— and A—— P——, both merchants of the City of Dublin, sole registered joint owners of the steamer, "Lord Gough," of Dublin, presently lying in the harbour of Greenock, Defenders, in which Petition the above-named pursuers prayed the Court to grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment within my jurisdiction, of all goods, effects, and debts, and in particular the said steamer "Lord Gough," therein situated, belonging or addebted to the defenders, all therein to remain under sure fence and arrestment at the pursuers instance, *jurisdictionis fundandæ causa*: And in the Condescendence annexed to said Petition it is narrated—That the principal pursuer, Agostino Chichizola, is master and owner of the said barque, "Argonauta" of Genoa, which is now lying in the harbour of Glasgow, that the defenders are the sole registered joint owners of the said steamer, "Lord Gough," of Dublin, which is presently lying in the harbour of Greenock: That on the 23d day of November, 1876, shortly before three o'clock A.M., or about that time, while the said barque was coming up the South or Saint George's Channel, and about mid-channel, off the Copelands, in prosecution of her voyage from Frabentos in the River Plate, bound for Glasgow (for which port she had got orders at Falmouth) with a cargo of meat, meal, and bone-meal in bags, she was run into and struck on the stem and bow by the said steamer, "Lord Gough," whereby the said barque had her stem and cutwater broken and carried away, her apron broken, her planks on the bow

stove in and damaged, the jib boom carried away, all the head sails, rigging, and gear torn and destroyed, and other damage was caused to the said barque in her hull, spars, sails, and rigging, and she was caused to make a great deal of water. After the said collision the said steamer did not come to the assistance of the said barque. After the said collision the said barque stood for the land on the Scottish coast till she was fallen in with by a tug steamer, which, on account of the damaged condition of the said barque, was engaged to tow her to her destination. After the wreck of the spars, sails, and rigging at the bow, was got cleared away, the tug steamer took the said barque in tow and towed her to Glasgow, where she arrived on the night of the day on which the collision occurred. In consequence of the said collision, the said barque will require to go into dock for repairs, and during the execution of such repairs she will be prevented from taking new employment or setting out on a new voyage. The loss and damages suffered and sustained, and to be suffered and sustained by and through the said collision will not be less than the sum of £2,500 sterling. The said collision was occasioned solely by and through the violation of the rules of navigation, and the negligence, mismanagement, and fault on the part of those on board and in charge of the said steamer "Lord Gough," at the time, for whom the defenders are responsible. At the time of the said collision, the said barque had her side lights properly set and burning brightly, and a good look-out was being kept on board of her. That the defenders are foreigners, and have no domicile in Scotland, but they have goods, effects, and debts, and particularly the said steamer "Lord Gough," belonging and indebted to them within my jurisdiction, which they intend to withdraw, to the prejudice of the pursuers; and that the pursuers intend to raise an action before the Lords of Council and Session against the defenders for payment of the said loss and damages; but it is necessary before doing so that jurisdiction be founded by arrest-

## PRECEPT.

Patrick Fraser, Esquire, Advocate, Sheriff of Renfrew and Bute, to Officers of Court jointly and severally: WHEREAS it is shown to me by Agostino Chichizola, master and owner of the barque "Argonauta," of Genoa, presently lying in the harbour of Glasgow, and \_\_\_\_\_ his mandatory, Pursuers—That upon the \_\_\_\_\_ day of December, 1876, they presented to me a Petition at their instance against J—— B—— and A—— P——, both merchants of the City of Dublin, sole registered joint owners of the steamer, "Lord Gough," of Dublin, presently lying in the harbour of Greenock, Defenders, in which Petition the above-named pursuers prayed the Court to grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment within my jurisdiction, of all goods, effects, and debts, and in particular the said steamer "Lord Gough," therein situated, belonging or addebtred to the defenders, all therein to remain under sure fence and arrestment at the pursuers instance, *jurisdictionis fundandæ causa*: And in the Condencendence annexed to said Petition it is narrated—That the principal pursuer, Agostino Chichizola, is master and owner of the said barque, "Argonauta" of Genoa, which is now lying in the harbour of Glasgow, that the defenders are the sole registered joint owners of the said steamer, "Lord Gough," of Dublin, which is presently lying in the harbour of Greenock: That on the 23d day of November, 1876, shortly before three o'clock A.M., or about that time, while the said barque was coming up the South or Saint George's Channel, and about mid-channel, off the Copelands, in prosecution of her voyage from Frabentos in the River Plate, bound for Glasgow (for which port she had got orders at Falmouth) with a cargo of meat, meal, and bone-meal in bags, she was run into and struck on the stem and bow by the said steamer, "Lord Gough," whereby the said barque had her stem and cutwater broken and carried away, her apron broken, her planks on the bow

stove in and damaged, the jib boom carried away, all the head sails, rigging, and gear torn and destroyed, and other damage was caused to the said barque in her hull, spars, sails, and rigging, and she was caused to make a great deal of water. After the said collision the said steamer did not come to the assistance of the said barque. After the said collision the said barque stood for the land on the Scottish coast till she was fallen in with by a tug steamer, which, on account of the damaged condition of the said barque, was engaged to tow her to her destination. After the wreck of the spars, sails, and rigging at the bow, was got cleared away, the tug steamer took the said barque in tow and towed her to Glasgow, where she arrived on the night of the day on which the collision occurred. In consequence of the said collision, the said barque will require to go into dock for repairs, and during the execution of such repairs she will be prevented from taking new employment or setting out on a new voyage. The loss and damages suffered and sustained, and to be suffered and sustained by and through the said collision will not be less than the sum of £2,500 sterling. The said collision was occasioned solely by and through the violation of the rules of navigation, and the negligence, mismanagement, and fault on the part of those on board and in charge of the said steamer "Lord Gough," at the time, for whom the defenders are responsible. At the time of the said collision, the said barque had her side lights properly set and burning brightly, and a good look-out was being kept on board of her. That the defenders are foreigners, and have no domicile in Scotland, but they have goods, effects, and debts, and particularly the said steamer "Lord Gough," belonging and indebted to them within my jurisdiction, which they intend to withdraw, to the prejudice of the pursuers; and that the pursuers intend to raise an action before the Lords of Council and Session against the defenders for payment of the said loss and damages; but it is necessary before doing so that jurisdiction be founded by arrest-

ment, as prayed for in said Petition. That having considered the said Petition, with the Condescendence and Note of Plea in Law thereto annexed, my Substitute at Greenock, on the \_\_\_\_\_ day of December, 1876, granted warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising arrestment, all as prayed for in said petition. Herefore, it is my will that on sight hereof ye pass and lawfully fence and arrest all goods, effects, and debts, and in particular the said steamer, "Lord Gough," situated within my jurisdiction, belonging or addebtod to the defenders, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

Given and subscribed by the Clerk of Court at Greenock, the  
\_\_\_\_\_ day of December, 1876.

No. 5. Form of Petition and Precept of Arrestment  
*jurisdictionis fundandæ causa* against a foreigner  
where the action is to be raised in the Sheriff  
Court, in terms of Act 40 and 41 Victoria, cap.  
50, section 8.

#### PETITION.

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In the Sheriff Court of Renfrew and Bute, at  
Greenock,

J—— S—— and Company, ship-chandlers in Liver-  
pool, and \_\_\_\_\_ their mandatory, Pursuers;

#### AGAINST

C—— D——, master of the ship or vessel ——,  
of ——, presently lying in the harbour of Green-  
ock, and as such master, representing the owner or  
owners of the said vessel, Defender :

The above named Pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment, within the jurisdiction of the Sheriff of Renfrew and Bute, of the said ship or vessel therein situated, of which the defender is master, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

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#### CONDESCENDENCE.

1. The defender is justly addebted and resting owing to the said J— S— and Company the sum of £—, for ship-chandlery goods furnished and delivered to the defender for the said ship or vessel upon the order of the defender, conform to account, commencing the — day of — and ending the — day of —, herewith produced, and herein referred to and held as repeated, *brevitatis causa*.
2. The defender is a foreigner, and has no domicile in Scotland, but the said ship or vessel is now lying in the harbour of Greenock, within the Sheriffdom of Renfrew and Bute.
3. The pursuers intend to raise an action, before the Sheriff of Renfrew and Bute, against the defender, for payment of the said debt, but it is necessary before doing so that the said ship or vessel should, in terms of the Act 40 and 41 Victoria, cap. 50, be arrested as prayed for.

## NOTE OF PLEA IN LAW.

The pursuers being about to institute an action before the said Sheriff against the defender for payment of the said debt, but before doing so, it being necessary to found jurisdiction by arrestment of the said ship or vessel, the pursuers are entitled to obtain a warrant for Precept of Arrestment *jurisdictionis fundandæ causa* as prayed for:

*IN RESPECT WHEREOF.*—  
PRECEPT.

Patrick Fraser, Esquire, Advocate, Sheriff of Renfrew and Bute: To Officers of Court jointly and severally: WHEREAS it is shewn to me by J—— S—— and Company, ship-chandlers in Liverpool, and ——, their mandatory, Pursuers—That upon the —— day of ——, 1877, they presented to me a Petition at their instance against C—— D——, master of the ship or vessel ——, of ——, presently lying in the harbour of Greenock, and as such master, representing the owner or owners of the said vessel, Defender, in which Petition the above named pursuers prayed the Court to grant warrant for Precept of Arrestment *jurisdictionis fundandæ causa*, authorising the arrestment within my jurisdiction of the said ship or vessel therein situated, of which the defender is master, therein to remain under sure fence and arrestment at the Pursuers' instance, *jurisdictionis fundandæ causa*: And in the Condencendence annexed to the said Petition it is narrated—That the defender is justly addebted and resting owing to the said J—— S—— and Company the sum of £——, for ship-chandlery goods furnished and delivered to the defender for the said ship or vessel upon the order of the defender, conform to account commencing the —— day of ——, produced with said Petition, and therein referred to and held as repeated, *brevitatis causa*: That the

defender is a foreigner and has no domicile in Scotland, but that the said ship or vessel is now lying in the harbour of Greenock, within my Sheriffdom : That the pursuers intend to raise an action before me against the defender for payment of the said debt, but it is necessary before doing so that the said ship or vessel should, in terms of the Act 40 and 41 Victoria, cap. 50, be arrested as prayed for in said Petition : That having considered the said Petition, with the Condescendence and Note of Plea in Law thereto annexed, my Substitute at Greenock, on the \_\_\_\_\_ day of \_\_\_\_\_ granted warrant for Precept of Arrestment *jurisdictionis fundandæ causa*, authorising arrestment, all as prayed for in said Petition : Therefore it is my will, that on sight hereof ye pass and lawfully fence and arrest the said ship or vessel \_\_\_\_\_ situated within my jurisdiction, therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

Given and subscribed by the Clerk of Court at Greenock,  
the \_\_\_\_\_ day of \_\_\_\_\_, 187—.

8. If the names of the owners of a foreign vessel are not known to the creditor, the proceedings will be directed against the master of the vessel, he being described "master of the Italian (or other nationality) "ship or vessel called the \_\_\_\_\_, presently lying at "the harbour of \_\_\_\_\_, and as such master representing the owner or owners of the said vessel, Defender."—Morrison & Milne *v.* Massa, 8th December, 1866, 5 Macph., 130.

9. An arrestment *juris. fund. causa* of a ship, executed under letters of arrestment, directed in

hundred and seventy-seven, and relative offer or estimate by the pursuers to the defender, dated the fourteenth day of October, eighteen hundred and seventy-six, and acceptance thereof by the defender, dated the second November, eighteen hundred and seventy-six, produced with the said Petition, and therein and herein referred to, and held as repeated *brevitatis causa*: That the defender is a foreigner and has no domicile in Scotland, but he has goods, effects, debts, and sums of money, belonging and addebt<sup>d</sup> to him within my jurisdiction, which he intends to withdraw to the prejudice of the pursuers: That the pursuers intend to raise an action before the Lords of Council and Session against the defender for payment of the said debt; but it is necessary before doing so that jurisdiction be founded by arrestment, as prayed for in said Petition: That having considered the said Petition, with the Condescendence and Note of Plea in Law thereto annexed, my Substitute at \_\_\_\_\_, on the \_\_\_\_\_ day of July, eighteen hundred and seventy-seven, granted warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising arrestment, all as prayed for in said Petition: Herefore, it is my will, on sight hereof, ye pass and lawfully fence and arrest all goods, effects, debts, and sums of money situated within my jurisdiction belonging or addebt<sup>d</sup> to the defender, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

Given and subscribed by the Clerk of Court at \_\_\_\_\_, the \_\_\_\_\_ day of July, eighteen hundred and seventy-seven.

No. 4. Form of petition and precept to arrest *juris. fund. causa* against owners of a foreign vessel for damages arising out of a collision, where action is to be raised in Court of Session.

## PETITION.

In the Sheriff Court of Renfrew and Bute at Greenock,

Agostino Chichizola, master and owner of the barque "Argonauta," of Genoa, presently lying in the harbour of Glasgow, and —— his mandatory, Pursuers;

## AGAINST

J—— B—— and A—— P——, both merchants of the City of Dublin, sole registered joint owners of the steamer "Lord Gough," of Dublin, presently lying in the harbour of Greenock, Defenders:

The above-named pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment within the jurisdiction of the Sheriff of Renfrew and Bute, of all goods, effects, and debts, and in particular the said steamer "Lord Gough," therein situated, belonging or addebted to the defenders, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

## CONDESCENDENCE.

1. The principal pursuer, Agostino Chichizola, is master and owner of the barque "Argonauta," of Genoa, which is now lying in the harbour of Glasgow.
2. The defenders are the sole registered joint owners of the said steamer "Lord Gough" of Dublin, which is presently lying in the harbour of Greenock.

3. On the 23d day of November, 1876, shortly before three o'clock A.M., or about that time, while the said barque was coming up the South or Saint George's Channel, and about mid channel, off the Copelands, in prosecution of her voyage from Frabentos in the River Plate, bound for Glasgow (for which port she had got orders at Falmouth) with a cargo of meat, meal, and bone-meal in bags, she was run into and struck on the stem and bow by the said steamer "Lord Gough," whereby the said barque had her stem and cutwater broken and carried away, her apron broken, her planks on the bow stove in and damaged, the jib boom carried away, all the head sails, rigging, and gear torn and destroyed, and other damage was caused to the said barque in her hull, spars, sails, and rigging, and she was caused to make a great deal of water.

4. After the said collision the said steamer did not come to the assistance of the said barque.

5. After the said collision the said barque stood for the land on the Scottish coast till she was fallen in with by a tug steamer which, on account of the damaged condition of the said barque, was engaged to tow her to her destination. After the wreck of the spars, sails, and rigging at the bow, was got cleared away, the tug steamer took the said barque in tow and towed her to Glasgow, where she arrived on the night of the day on which the collision occurred.

6. In consequence of the said collision, the said barque will require to go into dock for repairs, and during the execution of such repairs she will be prevented from taking new employment or setting out on a new voyage.

7. The loss and damages suffered and sustained, and to be suffered and sustained by and through the said collision will not be less than the sum of £2,500 sterling.

8. The said collision was occasioned solely by and through the

violation of the rules of navigation, and the negligence, mismanagement, and fault on the part of those on board and in charge of the said steamer, "Lord Gough," at the time, for whom the defenders are responsible.

9. At the time of the said collision, the said barque had her side lights properly set and burning brightly, and a good look-out was being kept on board of her.

10. The defenders are foreigners, and have no domicile in Scotland, but they have goods, effects, and debts, and particularly the said steamer "Lord Gough," belonging and addebted to them, within the jurisdiction of the Sheriff of Renfrew and Bute, which they intend to withdraw to the prejudice of the pursuers.

11. The pursuers intend to raise an action before the Lords of Council and Session against the defenders for payment of the said loss and damages; but it is necessary before doing so that jurisdiction be founded by arrestment, as prayed for.

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#### NOTE OF PLEA IN LAW.

The pursuers being about to institute an action before the Lords of Council and Session against the defenders for payment of theforesaid loss and damages, but being bound before doing so to found jurisdiction against them by arrestment, the pursuers are entitled to have warrant granted for Precept of Arrestment, *jurisdictionis fundandæ causa*, as prayed for:

#### *IN RESPECT WHEREOF.*

*Greenock, —— December, 1876.*—The Sheriff-Substitute having considered the foregoing Petition, with the Condescendence and Note of Plea in Law thereto annexed, grants warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising arrestment, all as prayed for in said Petition.

## PRECEPT.

Patrick Fraser, Esquire, Advocate, Sheriff of Renfrew and Bute, to Officers of Court jointly and severally: WHEREAS it is shown to me by Agostino Chichizola, master and owner of the barque "Argonauta," of Genoa, presently lying in the harbour of Glasgow, and \_\_\_\_\_ his mandatory, Pursuers—That upon the \_\_\_\_\_ day of December, 1876, they presented to me a Petition at their instance against J—— B—— and A—— P——, both merchants of the City of Dublin, sole registered joint owners of the steamer, "Lord Gough," of Dublin, presently lying in the harbour of Greenock, Defenders, in which Petition the above-named pursuers prayed the Court to grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment within my jurisdiction, of all goods, effects, and debts, and in particular the said steamer "Lord Gough," therein situated, belonging or addebtred to the defenders, all therein to remain under sure fence and arrestment at the pursuers instance, *jurisdictionis fundandæ causa*: And in the Condendence annexed to said Petition it is narrated—That the principal pursuer, Agostino Chichizola, is master and owner of the said barque, "Argonauta" of Genoa, which is now lying in the harbour of Glasgow, that the defenders are the sole registered joint owners of the said steamer, "Lord Gough," of Dublin, which is presently lying in the harbour of Greenock: That on the 23d day of November, 1876, shortly before three o'clock A.M., or about that time, while the said barque was coming up the South or Saint George's Channel, and about mid-channel, off the Copelands, in prosecution of her voyage from Frabentos in the River Plate, bound for Glasgow (for which port she had got orders at Falmouth) with a cargo of meat, meal, and bone-meal in bags, she was run into and struck on the stem and bow by the said steamer, "Lord Gough," whereby the said barque had her stem and cutwater broken and carried away, her apron broken, her planks on the bow

stove in and damaged, the jib boom carried away, all the head sails, rigging, and gear torn and destroyed, and other damage was caused to the said barque in her hull, spars, sails, and rigging, and she was caused to make a great deal of water. After the said collision the said steamer did not come to the assistance of the said barque. After the said collision the said barque stood for the land on the Scottish coast till she was fallen in with by a tug steamer, which, on account of the damaged condition of the said barque, was engaged to tow her to her destination. After the wreck of the spars, sails, and rigging at the bow, was got cleared away, the tug steamer took the said barque in tow and towed her to Glasgow, where she arrived on the night of the day on which the collision occurred. In consequence of the said collision, the said barque will require to go into dock for repairs, and during the execution of such repairs she will be prevented from taking new employment or setting out on a new voyage. The loss and damages suffered and sustained, and to be suffered and sustained by and through the said collision will not be less than the sum of £2,500 sterling. The said collision was occasioned solely by and through the violation of the rules of navigation, and the negligence, mismanagement, and fault on the part of those on board and in charge of the said steamer "Lord Gough," at the time, for whom the defenders are responsible. At the time of the said collision, the said barque had her side lights properly set and burning brightly, and a good look-out was being kept on board of her. That the defenders are foreigners, and have no domicile in Scotland, but they have goods, effects, and debts, and particularly the said steamer "Lord Gough," belonging and addebted to them within my jurisdiction, which they intend to withdraw, to the prejudice of the pursuers; and that the pursuers intend to raise an action before the Lords of Council and Session against the defenders for payment of the said loss and damages; but it is necessary before doing so that jurisdiction be founded by arrest-

ment, as prayed for in said Petition. That having considered the said Petition, with the Condescendence and Note of Plea in Law thereto annexed, my Substitute at Greenock, on the \_\_\_\_\_ day of December, 1876, granted warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising arrestment, all as prayed for in said petition. Herefore, it is my will that on sight hereof ye pass and lawfully fence and arrest all goods, effects, and debts, and in particular the said steamer, "Lord Gough," situated within my jurisdiction, belonging or addebtied to the defenders, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

Given and subscribed by the Clerk of Court at Greenock, the  
\_\_\_\_\_ day of December, 1876.

No. 5. Form of Petition and Precept of Arrestment  
*jurisdictionis fundandæ causa* against a foreigner  
where the action is to be raised in the Sheriff  
Court, in terms of Act 40 and 41 Victoria, cap.  
50, section 8.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute, at  
Greenock,

J—— S—— and Company, ship-chandlers in Liver-  
pool, and ——— their mandatory, Pursuers;

**AGAINST**

C—— D——, master of the ship or vessel ———,  
of ———, presently lying in the harbour of Green-  
ock, and as such master, representing the owner or  
owners of the said vessel, Defender :

The above named Pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant warrant for Precept of Arrestment, *jurisdictionis fundandæ causa*, authorising the arrestment, within the jurisdiction of the Sheriff of Renfrew and Bute, of the said ship or vessel therein situated, of which the defender is master, all therein to remain under sure fence and arrestment at the pursuers' instance, *jurisdictionis fundandæ causa*.

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#### CONDESCENDENCE.

1. The defender is justly addebted and resting owing to the said J—— S—— and Company the sum of £——, for ship-chandlery goods furnished and delivered to the defender for the said ship or vessel upon the order of the defender, conform to account, commencing the —— day of —— and ending the —— day of ——, herewith produced, and herein referred to and held as repeated, *brevitatis causa*.
2. The defender is a foreigner, and has no domicile in Scotland, but the said ship or vessel is now lying in the harbour of Greenock, within the Sheriffdom of Renfrew and Bute.
3. The pursuers intend to raise an action, before the Sheriff of Renfrew and Bute, against the defender, for payment of the said debt, but it is necessary before doing so that the said ship or vessel should, in terms of the Act 40 and 41 Victoria, cap. 50, be arrested as prayed for.

signetted letters of caption, horning, or arrestment, were on board of a ship, or were otherwise situated within the precincts of the jurisdiction of the High Court of Admiralty, the Judge Admiral had to be applied to for his concurrence. This was "obtained, " of course, upon production of a caption, horning, "arrestment, or other letters containing warrant of "arrestment duly signetted, and a deliverance suited "to the nature of the diligence" was granted accordingly. Juridical Styles : Signet Letters, 1st Ed., 1790, p. 672.

6. In maritime causes in the Sheriff Court, which, within its territory, possesses the same powers as the Admiralty Court did, the Sheriff may grant the usual warrant to dismantle, but if it is wanted it must be asked in the prayer of the petition. See form No. 1, *supra*.

7. Having got a warrant to dismantle, how, and under what circumstances it can be executed, is a most important matter to consider. The form of the warrant is somewhat misleading. It authorises the officer "to take the sails, rudders, and anchors "from the said vessels (the same always being in a "safe harbour)," and this by many agents and officers has been taken to imply a warrant to remove the vessel to a harbour for the purpose of dismantling, should the officer find her at the time

of arrestment not in a safe harbour but in an open roadstead, where it would endanger the vessel were the sails, rudder, and anchors taken from her. But the only two cases bearing on the point are adverse to this supposed power of removal, and these cases will now be referred to.

8. The first is *Kennedy v. M'Kinnon*, 13th Decr., 1821, 1 S., 210 (N. E. 198), and 23 F.C., 496. The reports are very meagre, and it will be useful, in more respects than one, to give a full statement of the case, and of the proceedings in connection with it, as it will show what was the practice in regard to the arrestment of ships under the old Admiralty Court forms, and how cases were heard and re-heard in the olden time.

9. It may be mentioned, as explanatory of what follows, that under the old forms a creditor was entitled to procure from the Clerk of Court a blank Precept, containing only the name of the judge, the description of the officers to whom addressed, the names and designations of the pursuer and defender, and the warrant to cite and to arrest and dismantle. Before getting this Precept, it was not necessary to set forth the grounds of action or the conclusions. These could be filled up before the calling of the cause. The reason for this mode of procedure was, that if a creditor had to wait till his agent could get

the grounds of action carefully prepared for insertion in the Precept before it was signed by the Clerk of Court, the ship to be arrested might escape. These Precepts were addressed to ——, Officers and Sergeants of the High Court of, Admiralty of Scotland, conjointly and severally; but as there were only two of these officers, and they resided in Edinburgh, it was necessary to give power, to the Messengers-at-Arms in the district where the Precept was to be executed, to do so. For this purpose there was printed on the back of the Precept a warrant in these terms:—"I, ——, Admiral Macer, do hereby give full power and permission to ——, Messenger-at-Arms, to execute the within Precept as fully and freely in all respects as I could do myself."

10. In Kennedy's case above referred to, one, Alexander M'Queen, who at the time was Postmaster at Sconcer, Isle of Skye, procured in February, 1809, from the Clerk of the Admiralty Court a blank Precept against Donald Kennedy, a herring curer, and master and owner of a sloop called the "Princess of Wales," then lying at Portree. The Precept contained, besides authority to cite the defender, a warrant to fence and arrest "all ships, barks, boats, goods, gear, debts, sums of money, and others whatsoever, pertaining to the defender; take the sails,

rudders, and anchors from the said vessel (the same being always in a safe harbour), to remain under sure fence and arrestment at the instance of the complainant," &c. The Precept had endorsed on it the usual deputation by the Admiralty Mace authorising Messenger-at-Arms to execute the Precept; and this warrant was put into the hands of Angus M'Donald, a Messenger-at-Arms in Portree, with instructions to cite Kennedy and to arrest his vessel.

11. At this time, Kennedy's sloop was at Portree, laden with a cargo of herrings for the Irish market. She was not moored at a quay, but was at anchor in the bay, about twenty fathoms (at low water) from the shore, to which she was attached by a hawser fastened to a ringbolt. The messenger went out in a small boat to the sloop, and placed the schedule of arrestment on the mast. Having done so, he removed the pump-spear and took it on shore, excusing himself afterwards by saying that it required repair, but which was disproved. A few days afterwards he employed three men to remove the vessel from where she lay to the distance of about a mile, where they left her aground on the sand. They, however, put supports or "legs" under her on each side, to keep her upright, but one of these legs broke and the vessel fell over on her side and took in some water.

On the next night they got the vessel upright and put another leg under her, but it again broke, and she fell on her side again and took in water. The messenger afterwards removed the sails and the herrings and stored them on shore.

12. Sometime after these proceedings, Kennedy raised an action against M'Queen, and also against the messenger and his cautioners for the value of the vessel and her cargo, in which he alleged that he owed nothing to M'Queen, and that the proceedings in connection with the arrestment were malicious. After sundry procedure, the Judge Admiral pronounced an Interlocutor, which, while repelling the objection to his jurisdiction, "in respect it could not " be imagined that he will not punish those who abuse " the warrant committed to them by him," found "that " there was nothing condescended on relevant to infer " any such abuse; first, because although it was said " that there was no debt due to the defender who " applied for the arrestment, no evidence of the pursuer's " assertions on that ground was produced; and second- " ly, the messenger seemed to have done nothing more " than what was customary in arresting the vessel; and " there was no occasion for the pursuer's abandoning " her after being arrested, which (as he says) occasioned " the loss. Therefore, *in hoc statu*, asoilzies the de- " fenders, and finds them entitled to expenses."

13. Against this Interlocutor, Kennedy petitioned; and in his petition he alleged that he owed no debt to M'Queen, which allegation he proved by producing a Decree of Absolvitor in the action on the dependence of which the vessel had been arrested. The Judge Admiral, on considering this petition, allowed a proof, in the course of which John M'Donald, one of the messenger's concurrents, deponed, that "he, "along with John M'Dougall and Angus M'Kay, were "employed by the messenger, Angus M'Donald, to take "the vessel, from the place where she lay, round a "point of land, where they left her aground on the "sand. Depones, that the distance they took the vessel "the deponent cannot be very certain of; it may be "more than a mile or may be less, but he thinks it is "a mile. Depones, that he does not know whether the "spear-box was in the pump when they took away the "vessel or not. That they sailed the vessel towards "the shore till she took the ground at the beginning "of ebb. That it was their intention to bring up the "vessel as far as the tide would carry her. Depones, "that when the vessel took the ground, the deponent "and those along with him put supports or legs under "her to keep her upright, which legs belonged to the "vessel. That they there left her. That the deponent "and the above-mentioned John M'Dougall and Angus "M'Kay went that night again to watch the vessel. "That during the day one of the legs broke, and the

" vessel fell to a side and received some water. That " the deponent and M'Dougall and M'Kay found the " vessel lying on her side on the beach the second time " they went to watch. That he does not think there " was much water in her. That that night they " righted the vessel and gave her a heel to the opposite " side, putting a leg under her. That in the night " time the leg broke; vessel fell on her side and took " in water. That the deponent does not know whether " there was a box in the pump, as they did not try. " That the deponent left the vessel next morning in " that situation, and he does not know how long she " remained in that state. That the gunwale of the " lower side was under water." The next witness, Angus M'Kay, deponed, *inter alia*, "that the spear- " box was not in the pump of the vessel when they " weighed the anchor." He deponed alike to the pre- ceding witness as to the situation in which they left the vessel the two different times they had the charge of her. That the defender, Angus M'Donald, gave the deponent and his companions a gun or musket, with instructions, should they be disturbed, to use it in their defence, but without mentioning any names. John M'Dougall, who was employed along with the two preceding witnesses in the removal of the vessel, deponed, that one of the boxes remained in the pump when they took away the vessel, but it would be of no service wanting the spear-box which he had taken

away. That he did not see the pump used any of the times he was on board, and that he saw them try it the last time he was on board, but it would not work.

14. On considering the evidence led by the parties, the Judge Admiral pronounced the following judgment, in February, 1813:—He “found it asserted by “the defender, M'Donald, that when he arrested the “pursuer's vessel she was lying safely moored with “one hawser tied to a ring-bolt ashore in the safest “berth in the harbour of Portree, where she had lain “for several weeks before in the winter season: Found, “that in this situation, when the defender arrested, “he most wantonly carried off the spear with the “lever-box of the pump; and that, although he pre-“tended to have done this out of compassion to the “pursuer, to repair the pump, because the ship was “always afloat, there was not a vestige of evidence “that the pump required any such interposition, “neither did it appear when he replaced the pump: “Found, that some days after the defender arrested “the vessel, he sent some people aboard, who, by his “directions, lifted the anchors, took her from the “safest berth in the harbour of Portree, and ran her “ashore in a sandy beach nearly a mile distant from “where she had been moored, where the vessel fell “over on her side and filled full of water; and by the

“defender or those employed by him, was afterwards  
“dismantled and unloaded of her cargo, consisting of  
“forty barrels of herrings, which were all put into a  
“warehouse, not water-tight: Found, that his conduct  
“was quite inconsistent with the duty of a messenger  
“executing an arrestment issued by this Court, whose  
“conduct was merely ministerial, to obey the direc-  
“tions of the warrant, which in no way authorised  
“him to take away the pump of the vessel, nor to  
“take and keep possession of the vessel and carry it  
“off to a distance and run it ashore, exposed to the  
“perils of the sea, nor to unload and warehouse the  
“cargo, all of which the defender was proved to have  
“done, and the Judge regretted to see evidence of  
“its being done out of malice to the pursuer: Found,  
“therefore, both the defenders, M'Queen and M'Don-  
“ald, jointly and severally liable to the pursuer  
“for damages; but as there was no proof of *what had*  
*become of the vessel and her cargo, although a*  
*warrant for selling both was obtained from this*  
*Court*, and that Malcolm Wright, as witness, pleaded  
“his privilege as agent for the pursuer, and refused  
“to answer any question on this subject, because his  
“knowledge arose from confidential communications  
“with the pursuer, the Judge ordained this matter  
“to be explained to him without argument, and  
“the pursuer to point out what evidence he had of  
“the damage which he claimed.” The necessity of

obtaining explanation as to the vessel was therefore obvious. But the petitioner reclaimed against the Judge Admiral's Interlocutor, trying to excuse himself and his country agent for the matter, and his first petition having been refused, a second was presented; upon advising which, the following was the last and final Interlocutor in the Admiralty Court:—  
“ Having advised the said petition, his Lordship  
“ found it equally unsatisfactory as all the previous  
“ pleadings of the petitioner, as from it not a trace  
“ was to be discovered of what became of the vessel  
“ or her cargo, or the process issued from this Court,  
“ admitted by the petitioner to have been sent to  
“ him; therefore refused this petition, and prohibits  
“ another to be received. NOTE.—If the petitioner  
“ be a loser, he may impute his sufferings to those  
“ who have egregiously mismanaged matters for him.”

15. M'Queen and M'Donald were ultimately assailed from the action in the Admiralty Court; but a reduction of the decree of absolvitor was raised by the pursuer and brought before Lord Alloway, one of the Judges of the Court of Session as Ordinary, when his Lordship ordained the pursuer to condescend on the grounds of his action; and on advising this condescension, with answers, replies, and duplies, the following Interlocutor was pronounced:—“ The  
“ Lord Ordinary having considered the condescension

" for the pursuer, separate answers for the defender  
" M'Queen, and for the messenger and his cautioners,  
" replies, and separate duplies, together with the whole  
" process: Finds that the debt upon which the defender  
" M'Queen used the diligence in question has not  
" been established, but that, on the contrary, Kennedy,  
" the pursuer of this action, has been assoilzied there-  
" from with expenses: Finds, therefore, that it was  
" altogether unjustifiable in him to apply for an  
" Admiralty arrestment to attach the pursuer's ship,  
" then lying with a cargo of herrings ready to sail  
" from Portree to Ireland; and therefore, and for the  
" reasons assigned in the Judge Admiral's Interlocutor  
" of 4th February, 1813, Finds the defender M'Queen  
" liable in all the damages which the pursuer can  
" qualify as having arisen from that arrestment:  
" Finds that with regard to the messenger, M'Donald,  
" the diligence was not executed in the manner it  
" ought to have been, and that for the reasons assigned  
" in the Judge Admiral's Interlocutor above-mentioned;  
" and that he was not entitled to carry off the spear  
" of the pump, or to take possession of the ship or  
" cargo, or to remove her from the place where she  
" was at anchor; and that, therefore, both the messen-  
" ger and his cautioners must be liable for any  
" damages which the pursuer can qualify as having  
" arisen from the messenger having improperly exe-  
" cuted that warrant, and having taken possession

"of the vessel: Therefore reduces, decerns, and  
"declares in terms of the reductive conclusions of the  
"libel."

16. In the case of Petersen *v.* M'Lean & Hope, 14th January, 1868, 6 Macph. 218, where a vessel, while lying in the roadstead of St. David's, in the Firth of Forth, was arrested under the usual Court of Session warrant, and removed by the messenger and men employed by him to the harbour of Inverkeithing, where, through the unskilfulness of those engaged in the removal, the vessel suffered considerable damage, it was held in an action of damages raised against the arresting creditors that the act complained of was a legal wrong for which damages were due irrespective of any other consideration. Though it is not stated in the report of the case, the author has ascertained that the messenger had no warrant for the removal other than the warrant to that effect supposed to be implied in the words in the precept "take the sails, rudders, and anchors "from the said vessel (the same being always in a "safe harbour)." The case was subsequently tried before a jury upon four issues approved by the Court of the above date; and on the first, for the illegal removal of the vessel, £100 was assessed; on the second £200; on the third £5; and on the fourth £215.

17. The effect of the decision in *Kennedy v. M'Kinnon*, and *Petersen v. M'Lean & Hope*, seems to be that if the ship at the time of the arrestment be lying in an open roadstead the officer cannot at his own hand remove the vessel from her moorings and bring her into a harbour, but must have a special warrant to do so after the arrestment has been made. This is the understanding now of the most experienced messengers and officers; and it accords with what is stated both in Darling's Practice of the Court of Session, Vol. I., pp. 263-4, and Shand's Practice, Vol. I., p. 419. On enquiry being made in February, 1877, at the Bill Chamber, at the request of the author, the officials in that office stated that nothing is known there of such special warrants, these never having even been applied for. The proper course is to make an application to the Judge Ordinary of the district where the vessel lies arrested, and there appears to be no doubt of the Sheriff's power to grant the warrant to bring her into harbour. On referring to the commission to the Admiral Depute under the old system (*supra* p. 6), it will be seen that he had power to loose not only arrestments laid on under his own warrants, but also those laid on under the warrants of the High Court; "and also "the power of preventing and punishing breaches of "said arrestments, and of taking such other steps as "are necessary and usual in this department of

"judicial procedure." The authority, therefore, of the Sheriff, who in his own district now possesses the same powers as the Admiralty Judge formerly did, to grant a warrant authorising the bringing of an arrested vessel into a safe harbour for the purpose of dismantling, seems to be unquestionable. The following may be the form of the application :—

No. 7. Form of petition to bring an arrested vessel into harbour for dismantling, where warrant has been granted by the Sheriff.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

A—— B——, Merchant in Greenock, Pursuer;

AGAINST

C—— D——, Shipowner in Glasgow, Defender.

The above-named pursuer submits to the Court the Condescendence and Note of Plea in Law hereto annexed, and prays the Court

To grant warrant to Officers of Court jointly and severally, and such persons as they may call to assist them, to pass on board of the ship or vessel "Romulus," of Glasgow, belonging to the defender, now lying at the Tail-of-the-Bank, in the river Clyde, off Greenock [*or other road-stead*] and to raise her anchor or anchors and bring her to, and moor her in safety in or at the harbour of Greenock, and there to dismantle the said ship or vessel, in conformity with the warrant mentioned in the said Condescendence to that effect, aye and until sufficient caution be found, in terms of the said warrant.

## CONDESCENDENCE.

1. Upon the ——— the pursuer presented a petition to the Sheriff Court of Renfrew and Bute, at Greenock, against the defender, in which the pursuer prayed the said Court [*here narrate the prayer of the original petition, including the craving for warrant to arrest and dismantle, supra p. 35*], and upon said date the Sheriff-Substitute of Renfrew and Bute, at Greenock, *inter alia*, granted warrant [*here narrate terms of warrant to arrest and dismantle, supra p. 37*].

2. In virtue of said warrant, the pursuer on same day caused ——— an Officer of Court to lawfully fence and arrest the said ship or vessel "Romulus," belonging to the defender, the said ship or vessel then lying at anchor at the Tail-of-the-Bank, in the river Clyde, off Greenock [*or state what other roadstead the vessel was lying in*] conform to execution of arrestment under the hand of the said ——— herewith produced and herein referred to.

3. Notwithstanding the said arrestment, the said ship or vessel is about to sail for foreign parts, and the pursuer is thus in danger of losing the benefit of his said arrestment unless the said ship or vessel is prevented from sailing by being dismantled.

4. In order that this may be lawfully done, it is necessary that the said ship or vessel should be in a safe harbour, and hence the present application is made.

## NOTE OF PLEA IN LAW.

The pursuer having obtained a warrant to arrest and dismantle the said ship or vessel, and having in virtue thereof arrested her, is entitled to obtain a warrant to bring the said ship or vessel into a safe harbour, in order that she may be dismantled:

*IN RESPECT WHEREOF.*

*Greenock, —— 18——.*—The Sheriff-Substitute having considered the foregoing petition, with the petition and warrant and execution of arrestment therein referred to, grants warrant as craved.

No. 8. Form of petition to bring an arrested vessel into harbour, where warrant to arrest and dismantle has been granted by the Court of Session.

PETITION.

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In the Sheriff Court of Edinburghshire, at  
Edinburgh,

A—— B——, Merchant in Greenock, Pursuer;

AGAINST

C—— D——, Merchant in Glasgow, Defender.

The above-named pursuer submits to the Court the Condescendence and Note of Plea in Law hereto annexed, and prays the Court

To grant warrant to Officers of Court jointly and severally, and such persons as they may call to their assistance, to pass on board of the ship or vessel called the "Grecian," belonging to the defender, now lying in Leith Roads, in the River Forth [*or other roadstead*] and to raise her anchor or anchors and bring her to, and moor her in safety in one of the docks of the port of Leith [*or other safe harbour*] and there to dismantle the said vessel, in conformity with the warrant mentioned in the said Condescendence to that effect, aye, and until sufficient caution be found, in terms of said warrant.

## CONDESCENDENCE.

1. Upon the \_\_\_\_\_ day of \_\_\_\_\_ the pursuer raised an action before the Lords of Council and Session against the defender, concluding for payment of (*here narrate the conclusions of the summons for principal, interest, and expenses*), which summons contained a precept or warrant to fence and arrest [*here narrate terms of warrant to arrest and dismantle, as in summons*].
  2. On same date the Lord Ordinary on the Bills in the Court of Session granted warrant of concurrence.
  3. In virtue of said summons and precept or warrant to arrest and concurrence thereon, the pursuer, on the \_\_\_\_\_ day of \_\_\_\_\_, caused \_\_\_\_\_, Messenger-at-Arms, to fence and arrest the ship or vessel "Grecian," of Glasgow, belonging to the defender, the said ship or vessel then lying at anchor in Leith Roads, in the River Forth [*or other roadstead*], conform to execution of arrestment under the hand of the said \_\_\_\_\_, herewith produced and herein referred to.
  4. Notwithstanding the said arrestment, the said ship or vessel is about to sail for foreign parts, and the pursuer is thus in danger of losing the benefit of his said arrestment unless the said ship or vessel is prevented from sailing by being dismantled.
  5. In order that this may be lawfully done, it is necessary that the said ship or vessel should be in a safe harbour; and hence the present application is made.
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## NOTE OF PLEA IN LAW.

The pursuer having obtained a warrant to arrest and dismantle the said ship or vessel, and having in virtue thereof arrested her, is entitled to obtain a warrant to bring the said ship or vessel into a safe harbour, in order that she may be dismantled:

*IN RESPECT WHEREOF.*

*Edinburgh, ——— 18——.*—The Sheriff-Substitute having considered the foregoing petition, with the summons and warrant and execution of arrestment therein referred to, grants warrant as craved.

18. After the foregoing was printed, the important case of Carlberg, &c., *v. Borjesson and Mandatory* came before the First Division of the Court of Session (21st November, 1877, Scottish Law Reporter, Vol. XV., p. 112). It was a petition for recal of arrestments used against a vessel called the "Edgar Cecil," of Gottenburg. That vessel had been arrested while at Glasgow, for the purpose of founding jurisdiction; but before the summons could be got raised, signetted, and sent to the Clyde, the vessel had, without caution *de judicio sisti* being found, sailed from Glasgow and proceeded on her voyage. The messenger, however, followed her down the river in a tug, on board of which he had a number of men to assist him. The messenger's tug overtook the "Edgar Cecil" between Toward Point and Skelmorlie (in the Clyde), and having boarded her, arrested her and brought her back to Greenock Harbour, where he dismantled her. The summons, which contained the usual warrant to arrest and dismantle, bore also the concurrence of the Lord Ordinary; but notwithstanding this, it was decided that the messenger's proceedings were illegal, and the arrestments were recalled without caution.

19. In the opinions of Lords Mure and Shand, who concurred in the above decision, reference was made to the effect of the arrestments to found jurisdiction, and to what was the proper proceeding to prevent the breach of it. Lord Mure said—"I have come to "this conclusion with considerable reluctance, for "the vessel lay under arrestments *ad fundam jurisdictionem* when she sailed, and was bound to "stay where she was. The captain took the law "into his own hands and went away, and therefore it "is with reluctance that I say that it was incompetent "to stop him; yet whatever may have been the pro- "per means to adopt, I do not think that this was a "competent course."

20. Lord Shand said—"Now in considering that "question I lay out of account the arrestments that "have been used *ad fundam jurisdictionem*; for "I am clear with your Lordship in the chair that the "warrant to arrest the vessel on the dependence of "the action was no remedy for breach of the former "arrestment. *A warrant to seize and bring back the vessel on that ground might probably have been obtained from the Judge Ordinary*, but in the case "that occurred the messenger had no warrant to "seize and bring back the vessel." The course thus indicated by Lord Shand as the proper one to be followed in the event of a threatened breach of arrest-

ment to found jurisdiction is just that which was adopted in the case referred to, *supra* p. 57.

21. In a subsequent case regarding arrestments which had been used against the ship referred to in the last three sections, at the instance of certain parties and their mandatory, to the latter of whom the illegality connected with the arresting and bringing her back to Greenock after she had started on her voyage was directly due, and which arrestment had been recalled without caution, it was held that the ship could not then be arrested at the hands either (1) of the granter of the mandate, or (2) of the mandatory in his private capacity, or (3) of parties who had granted authority to the mandant to act for them, and who had a common end to serve with him in executing the arrestment. *Carlberg, &c., v. Borjesson and Mandatory*, 22d December, 1877, Scottish Law Reporter, Vol. XV., p. 257.

22. In delivering judgment the Lord President said—"It is very clear that had it not been that this ship was illegally seized and brought back by B. O. Borjesson, and W. Wright, his mandatory, she would not be in Greenock now, and consequently would not have been subject to these arrestments, the recal of which is now petitioned for. She

“ would otherwise have been at the present moment  
“ in prosecution of the voyage, in the course of which  
“ we have already held she was illegally brought back.  
“ If, under these circumstances, some entirely indepen-  
“ dent third party had arrested her on the dependence  
“ of an action between him and the master, the  
“ question would have been quite different from that  
“ with which we have now to deal. But, in my  
“ opinion, there is here no independent third party.  
“ One of the arrestments is at the instance of Mr  
“ Borjesson, by whose illegal act she was actually  
“ brought back, and who, therefore, in making this  
“ arrestment, is trying to benefit by his former illegal  
“ proceeding; and I think exactly the same objection  
“ applies to the arrestment by Mr Wright. Mr  
“ Wright was Mr Borjesson’s mandatory, and was  
“ engaged in carrying on the process, the object of  
“ which was to bring back the vessel, and to compel  
“ the master, Carlberg, to account for his intromis-  
“ sions. Therefore he is equally with Borjesson an  
“ actor in the illegal proceedings, and not entitled to  
“ take any advantage from them. But there still  
“ remains for consideration the arrestments at the  
“ instance of Messrs Lars and Anders Borjesson. Now  
“ these two gentlemen are among that class of owners  
“ who authorised Mr B. O. Borjesson to bring Carl-  
“ berg to account in this country.” . . . . .  
“ It was therefore for the sake of Lars and Anders

“ Borjesson, as well as for B. O. Borjesson that that  
“ illegal proceeding was carried out. They were all in  
“ combination. They were working for a common end,  
“ and it was for the promotion of that end that the  
“ previous illegality was committed. I cannot find  
“ it possible to dissociate Lars and Anders Borjesson  
“ from the others; they all have a common purpose,  
“ as disclosed by the answers to the petition, and  
“ the authority is shewn by those answers. These  
“ arrestments are for the purpose of recovering sums  
“ of money advanced to Carlberg for the ship, and to  
“ make him account for his intromissions with them.  
“ It is therefore impossible to say that we have inde-  
“ pendent third parties. None of them are more  
“ entitled than B. O. Borjesson was to use arrestments  
“ on the ship being accidentally brought back to  
“ Greenock, and therefore I am for recalling all the  
“ arrestments.”

23. The share of a part owner of a vessel may be arrested by his creditors even though chartered for a foreign voyage; but the other owners will be entitled to have the arrestment loosed upon caution being found, as specified in the following form of petition. *Malcolm, &c., v. Cook*, 20th December, 1855, 16 D, 262. See also *M'Aulay v. Gault*, 6th March, 1821, 20 F.C., 307.

No. 9. Form of petition for loosing arrestment of the share of a ship, where warrant to arrest has issued from Sheriff Court.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

L—— M—— and N—— O——, shipowners,  
Greenock, owners of thirty-two sixty-fourth shares  
of the ship "Clyde," of Greenock, Pursuers;

**AGAINST**

P—— R—— & Company, merchants, Greenock,  
Defenders:

The above named pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To recal or loose an arrestment used against the said ship "Clyde," of Greenock, now lying in the harbour there, to the effect of allowing the said vessel to load and proceed on her voyage to Trinidad, upon the pursuer finding good and sufficient caution to make the said vessel furthcoming to abide the result of the diligence at the instance of the defenders against R—— S——, shipowner in Greenock, under which the said vessel was, upon the ——, arrested at Greenock, by placing her within the jurisdiction of the Court, and in as good a condition as at the date of the said arrestment, on her return from her voyage, or within such period as shall appear reasonable to the Court before which the diligence shall be insisted on or enforced, or otherwise; and, failing their doing so, to pay to the pursuers the sum of £1500,

or such other sum more or less as shall be ascertained to be the value of whatever interest the said R—S— had therein, which may be found to have been validly attached by the arrestments used by the defenders.

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CONDESCENDENCE.

1. The pursuers are the registered owners of thirty-two sixty-fourth shares of the ship or vessel "Clyde," of Greenock, presently lying in the harbour there, and the said R—S— is the registered owner of the other thirty-two shares of said vessel.

2. The said vessel was, on the ——, laid on the berth at Greenock as a general ship for Quebec [or, the said vessel was, on the ——, chartered by F—G— & Co., merchants, Glasgow, for a voyage from Greenock to Trinidad and back to the Clyde], and part of her cargo has been taken on board [or the pursuers are the managing owners of the said vessel, which is now lying in the harbour of Greenock, and are desirous of having her chartered for a foreign voyage]; but upon the —— the share or interest of the said R—S— in the said vessel was arrested by B—C—, an officer of court, the arrestment bearing to have been laid on in virtue of a warrant to arrest, dated the ——, granted by the Sheriff of Renfrew and Bute on a petition at the instance of the defenders against the said R—S—, and to arrest the said shares or interest of the said R—S— in the said vessel, aye, and until sufficient caution be found acted in the books of the said Sheriff Court. The schedule of arrestment affixed to the mast of the said vessel is herewith produced. The pursuers do not admit the validity of the said arrestment, and all objections thereto are reserved.

3. The pursuers are desirous of fitting out the said vessel for, and sending her to sea, and they are willing to find caution in the terms specified in the prayer of the petition.

4. The 21st section of the Statute 1 and 2 Victoria, cap. 114, is referred to and founded on.

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NOTE OF PLEA IN LAW.

The pursuers being willing to find caution as aforesaid, are entitled to have the said arrestment recalled or loosed to the effect specified in the petition.

*IN RESPECT WHEREOF.*

24. Where a vessel was arrested for a debt of the owner (a foreigner), and where she had been chartered by the master as representing the owner prior to the arrestment, the charterer was found not entitled to have the arrestment recalled to the effect of allowing the vessel to proceed unless he found caution for the debt. *Thorburn v. De Wolf*, 18th December, 1847, 10 D, 310, per Lord Moncrieff.

VIII.—PROCEEDINGS FOR THE SALE OF VESSELS.

1. When a vessel has been arrested for a debt for which decree has been obtained, in place of bringing an action of forthcoming to render the arrestment effectual it is an action of sale that is raised (*supra* p. 60), and being a *real* action it may be brought before the Sheriff of the county in which the vessel is lying. If the owners are not resident in the same county they may be cited in terms of the Act 39 and 40 Vict., cap. 70, section 12; or if they be foreigners, and resident abroad, they may be cited edictally in

virtue of section 9 of the same act; but if it be desired to make more sure of the jurisdiction, it may be well to precede the action of sale against the foreigner by the petition and precept, *supra* p. 50, and the arrestment thereon to found jurisdiction. The form of the action of sale will be as follows, *viz.* :—

No. 10. Form of petition for sale of an arrested vessel belonging to a foreigner.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

A—— B——, Ship Chandler in Greenock, Pursuer;

**AGAINST**

C—— D——, Shipowner in Gottenburg, Sweden,  
owner of the Swedish ship or vessel "Oscar," now  
lying in the harbour of Greenock [*if arrestment has  
been used add, against whom arrestment to found  
jurisdiction has been used*], Defender:

The above-named Pursuer submits to the Court the Condescendence and Note of Plea in Law hereto annexed, and prays the Court

To grant decree and warrant for the said ship or vessel "Oscar," with her boats, apparelling, and appurtenances, now lying arrested in the said harbour of Greenock, being publicly roused and sold, and the proceeds of sale, after deducting the expenses of arrestment and the sale and other procedure to follow hereon, made forthcoming

to the pursuer, at least as much thereof as will completely satisfy and pay him the sum of one hundred and fifty pounds sterling, and the lawful interest thereof from and since the — till payment, with ten pounds of expenses of process and five shillings as dues of extract, all contained in the extract decree from the Sheriff Court books of Renfrewshire, at Greenock, at the instance of the pursuer against the defender, dated the —.

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#### CONDESCENDENCE.

1. On the — the pursuer raised an action before the said Sheriff Court against the defender, the warrant for citation on which contained also a warrant to arrest on the dependence. The said petition concluded for payment of the sum of £150 of principal, with the lawful interest thereof from and since the — till payment, with expenses.

2. In virtue of said warrant to arrest, the pursuer caused —, an officer of court, upon the —, to fence and arrest the said ship or vessel, "Oscar," with her boats, apparelling, and appurtenances, then and still lying in the harbour of Greenock, all to remain under sure fence and arrestment at the instance of the pursuer, aye and until sufficient caution should be found acted in the books of the Sheriff of Renfrew and Bute that the same should be made forthcoming to the pursuer as accords of law. The execution of arrestment is herewith produced.

3. Upon the — the pursuer obtained from the said Sheriff decree against the defender for payment of the said principal and interest, with £10 of expenses of process, and 5s, being dues of extract, conform to extract decree from the said Sheriff's Court books, dated the —, herewith produced.

4. No part of the said sums has been paid to the pursuer, and

he is now desirous of obtaining warrant to sell the said vessel for payment of his said debt.

5. [If arrestment to found jurisdiction has been used aver this.]

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#### NOTE OF PLEA IN LAW.

The pursuer having arrested the said vessel on the dependence of the said action, and obtained decree therein against the defender for payment of the said sums of principal, interest, and expenses, is entitled to obtain warrant to sell as prayed for :

#### *IN RESPECT WHEREOF.*

#### No. 11. Form of warrant on petition.

*Greenock, —— 18—.*—The Sheriff-Substitute of Renfrew and Bute grants warrant to cite the defender upon an inducē of —— days, by serving him edictally with a copy of the foregoing Petition, Condescendence, and Note of Plea in Law, and of this Warrant, and ordains the defender, if he intends to shew cause why the prayer of the petition should not be granted, to lodge in the hands of the Clerk of Court at Greenock a notice of appearance within the inducē of citation hereon, under certification of being held as confessed.

Note.—For directions as to the edictal citation, see 39 & 40 Vict., cap. 70, sec. 9.

2. If no appearance is made for the defender, which will be certified by the Clerk of Court, a minute may be lodged craving warrant in the terms following, viz.:

#### No. 12. Form of remit to valuator.

*Greenock, —— 18—.*—The Sheriff-Substitute having considered the process with the minute lodged for the pursuer, and

no appearance being made by the defender, grants warrant to \_\_\_\_\_ shipbuilder in Greenock, to pass on board of the Swedish ship or vessel "Oscar," where she at present lies arrested in the harbour of Greenock, and to take up a full and complete inventory of the said vessel, and her boats, apparelling and appurtenances, and, if needful, to break open the hatches and other lockfast places of said vessel, the same being again carefully fastened: Ordains the said \_\_\_\_\_ to give his oath as to the verity of the said inventory, as also as to the sum at which the said vessel and her foresses may be set up in a judicial sale. Farther, grants diligence against havers for recovery of the ship's register or other titles thereof; and commission to the Depute Clerk of Court to take the oath of the said valuator as to the said value, and the oaths of the havers.

3. In cases of foreign vessels, the ship's register or other title is usually in the hands of the Consul at or near to the port at which the ship is lying; and if not delivered up voluntarily it can be recovered under the above diligence and commission.

4. On getting his warrant the valuator will proceed to inventory the vessel's appurtenances and make his valuation, to which he will make oath as underneath.

#### No. 13. Form of inventory and oath.

Inventory of the Swedish ship or vessel "Oscar," presently lying in the harbour of Greenock, taken upon this \_\_\_\_\_ day of \_\_\_\_\_, by E\_\_\_\_ F\_\_\_\_, Shipbuilder in Greenock, nominated and appointed for that purpose by the Sheriff-Substitute of Renfrew and Bute, at Greenock, by his interlocutor, dated the \_\_\_\_\_, in the petition of sale at the instance of A\_\_\_\_ B\_\_\_\_, ship chandler in

Greenock, against C—— D——, shipowner in Gottenburg,  
defender :

Hull, three masts, &c., &c. [Here specify the appurtenances  
of vessel.]

E—— F——.

**OATH OF VALUATOR TO BE APPENDED TO INVENTORY.**

At Greenock, the ——, In presence of —— Sheriff Clerk  
Depute of Renfrewshire, Commissioner appointed by the said  
interlocutor, Compeared E—— F——, shipbuilder in Greenock,  
who being solemnly sworn and examined : Depones that the above  
is a just, true, and complete inventory of the Swedish ship or  
vessel "Oscar," taken up by him under the warrant before  
mentioned. Further depones that in his opinion the said vessel, and  
her boats, apparel, and appurtenances, as entered in the foregoing  
inventory, may be set up to public roup and sale at the sum of  
£——. All which is truth, as the deponent shall answer to God.

E—— F——.

G—— H——, Comr.

5. On getting the inventory and oath the pursuer  
will then enrol the case for warrant of sale, which  
may be as follows:

**No. 14. Form of warrant of sale.**

*Greenock, —— 18—.—The Sheriff-Substitute having con-*  
*sidered the inventory and valuation made by E—— F——, ship-*  
*builder in Greenock, No.— of process : Decerns and ordains the*  
*Swedish ship or vessel "Oscar," with her boats, apparelling, and*  
*appurtenances, presently lying in the harbour of Greenock, to be sold*  
*by public roup within the Sheriff Court House, Greenock, before*  
*the Sheriff-Substitute, [or if this is not convenient, state some other*  
*place, before the Depute Clerk of Court, hereby appointed judge*

of the roup], on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ current, at \_\_\_\_\_ o'clock \_\_\_\_\_, at the upset price of £\_\_\_\_\_ ; appoints the sale to be advertised in the "Greenock Telegraph" and "Glasgow Herald" [or other newspapers], \_\_\_\_\_ times at least before the day of sale; also appoints the purchaser to consign the price in the Royal Bank of Scotland at Greenock, in the name of the said Sheriff Clerk Depute, upon a receipt payable upon such order as may be pronounced in this Process, and the same to be lodged with the Clerk of Court: Farther, appoints the sale to proceed upon articles and conditions of roup to be prepared at the sight of the Clerk of Court and signed by him.

No. 15. Form of articles of sale, when sale not in Court or before the Sheriff-Substitute, but in presence of the Clerk of Court.

Articles and conditions of roup and sale of the vessel called the "Oscar," presently lying in the harbour of Greenock, which vessel and her boats, apparelling, and appurtenances conform to inventory taken by E—— F——, shipbuilder in Greenock, are to be exposed to sale by public roup, within the Tontine Hotel, Cathcart Street, Greenock, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, at 12 o'clock noon, in presence of \_\_\_\_\_ Sheriff Clerk Depute of Renfrewshire at Greenock, by virtue of a warrant granted by the Sheriff-Substitute of Renfrew and Bute, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_; In the cause in which [here give name and designation of pursuer and defender].

*Primo.*—The said vessel "Oscar," with her float boats, apparelling, and appurtenances, will be exposed to sale by public roup, place and time foresaid, at the upset price of £\_\_\_\_\_ sterling, and the person offering therefor the said upset price, or in case of more offerers than one, the highest offerer shall, after three fair calls of

"once," "twice," "thrice," by the auctioneer conducting the sale, be preferred to the purchase; and every offer after the first shall exceed the immediately preceding offer in at least the sum of Five Pounds sterling, and each offerer shall subscribe his offer and become bound on the conditions expressed in these articles.

*Secundo.*—The purchaser shall, within ten days after the day of sale, at the sight of \_\_\_\_\_ the pursuer's agent, consign the price in the Royal Bank of Scotland at Greenock, in the name of the said Sheriff Clerk Depute, on a deposit receipt payable upon orders to be pronounced in said process, and to be lodged with the said clerk.

*Tertio.*—The purchaser shall, if required, immediately after the roup, under the liquidate penalty of one-fifth part of the sum offered by him, grant bond with a sufficient cautioner to consign the said price within ten days after the said day of sale into the said bank, payable upon a receipt as aforesaid.

*Quarto.*—If the purchaser fail to grant bond as aforesaid, if required, or consign the price, he shall be liable in the said penalty, and the next immediately preceding offerer shall, if the judge of the roup shall think proper, be preferred to the purchase conform to his own offer; and such immediately preceding offerer shall forthwith, upon intimation to him of the failure of the highest offerer to make implement in the above terms, under the like penalty grant bond with a sufficient cautioner to consign the said price as aforesaid within ten days after such intimation.

*Quinto.*—Should the person preferred to the purchase fail to grant bond, or consign the price as aforesaid, the judge of the roup may, if required by the agent conducting the sale, declare the person preferred to the purchase to have forfeited all right to the vessel and her foresaids, and report the same to the court, in order that warrant may be granted for the re-exposure of the vessel and her foresaids to sale, all without prejudice to and

under reservation of all claims at the instance of the pursuer in the said action for the loss, damages, and expenses that may be occasioned by the said failure.

*Sexto.*—The said vessel “Oscar” and her float boats, apparelling, and appurtenances, shall be taken as they now stand, without any allowance for error in description or tonnage, deficiency in weight, length, or quantity, or defect in quality, or for any other error, deficiency, or defect (if any) whatever.

*Septimo.*—The said Sheriff Clerk Depute shall be the judge of the roup, with power to determine all questions, disputes, or claims that may arise betwixt or at the instance of the offerers, and his determination shall be final : IN WITNESS WHEREOF.

No. 16. Form of minute of adjournment of sale if no offer made.

At Greenock, and within the Tontine Hotel, Cathcart Street, Greenock, the \_\_\_\_\_, at twelve o'clock noon, the said \_\_\_\_\_ or vessel “Oscar,” with her boats, apparelling, and appurtenances, conform to inventory taken by E\_\_\_\_ F\_\_\_\_, shipbuilder in Greenock, being exposed to sale at the upset price of £\_\_\_\_\_, at \_\_\_\_\_ in presence of \_\_\_\_\_ the Sheriff Clerk Depute of Renfrewshire at Greenock, judge of the roup, all in terms of the before written articles and conditions of roup and sale; but no person appearing to offer the said price for the same, the said judge of the roup hereby adjourns the sale to another day to be fixed by the Court: IN WITNESS WHEREOF

6. If the price at which the vessel is exposed is not obtained, the pursuer will enrol the case to have authority granted by the Sheriff for re-exposing the vessel at a reduced upset price, and on such authority being obtained, the vessel will be re-advertised and re-

exposed. For the reduction of the upset price no new valuation is necessary. If a sale takes place, the minute may be in the following terms:—

No. 17. Form of minute where sale takes place.

At Greenock, and within the Tontine Hotel, Cathcart Street, Greenock, the \_\_\_\_\_, at twelve o'clock noon, the said ship or vessel "Oscar," with her boats, apparelling, and appurtenances, conform to inventory taken by E—— —F, shipbuilder in Greenock, being exposed to public roup and sale at the upset price of £\_\_\_\_\_, in the presence of \_\_\_\_\_ Sheriff Clerk Depute of Renfrewshire at Greenock, judge of the roup, all in terms of the before written articles and conditions of roup and sale, when compeared William Campbell, shipmaster, Greenock, who offered the upset price of £\_\_\_\_\_.

(Signed) Wm. CAMPBELL.

And, after sundry other biddings, compeared Charles Waddell, shipmaster, Greenock, who offered the sum of £\_\_\_\_\_.

(Signed) CHARLES WADDELL.

And Hugh Jamieson, ship chandler in Greenock, who offered the sum of £\_\_\_\_\_; and he being the last and highest offerer, the said judge of the roup hereby prefers him to the purchase, and the said Hugh Jamieson declared he made the said purchase on behalf of David Dunbar, shipowner in Glasgow: Therefore, the said David Dunbar enacts himself accordingly, and binds and obliges himself and his heirs, executors, and successors, to implement the foregoing articles and conditions so far as incumbent on the purchaser in every respect under the penalty therein specified: and the said Charles Waddell being the immediately preceding highest offerer, binds and obliges himself and his heirs and successors to implement the foregoing articles and conditions in so far as incumbent on him: IN WITNESS WHEREOF.

7. The pursuer's agent conducting the sale, for his own exoneration should, immediately after it, require the purchaser to execute and deliver a bond of caution in the following terms:—

No. 18. Form of bond for caution of price.

I, David Dunbar, shipowner in Glasgow, considering that the ship or vessel called the "Oscar," with her boats, apparelling, and appurtenances, as she lay and now lies in the West Harbour of Greenock, conform to inventory taken by E—— F——, shipbuilder in Greenock, were on the ——, within the Tontine Hotel in Greenock, exposed to sale at the upset price of £——, in presence of ——, the Sheriff Clerk Depute of Renfrewshire at Greenock, judge of the roup, all in terms of certain articles and conditions of roup and sale signed by him, and dated ——, in virtue of a warrant granted by the Sheriff-Substitute of Renfrew and Bute in the process of sale at the instance of [*here state the names and designation of pursuer and defender*], and after sundry biddings, Hugh Jamieson, ship chandler in Greenock, compeared and offered the sum of £—— sterling; and he being the last and highest offerer, the said judge of the roup preferred him to the purchase: and the said Hugh Jamieson having declared that he made the said purchase on my behalf: Therefore, I, the said David Dunbar, enacted myself accordingly, and bound and obliged myself and my heirs and successors to implement the said articles and conditions so far as incumbent on the purchaser in every respect, under the penalty therein specified: and, also, considering that by the said articles and conditions of roup and sale it was *inter alia* declared that the purchaser should, if required, immediately after the roup, under the penalty of one-fifth part of the price offered by him, grant bond with a sufficient cautioner to consign the said

price, within ten days after the said day of sale, in the Royal Bank of Scotland at Greenock, in the name of the said Sheriff Clerk Depute, on a deposit receipt payable upon orders to be pronounced in the process mentioned in the said articles and conditions: and now, seeing that I have been required to grant these presents in manner underwritten: Therefore I, the said David Dunbar, and I ——, as cautioner, surety, and full debtor with and for him in the premises, do hereby judicially enact, bind, and oblige ourselves, our heirs, executors, and successors whomsoever, that I, the said David Dunbar, shall, on or before ——, being the tenth day after the said day of sale, at the sight of ——, writer, Greenock, the pursuer's agent, consign the said sum of £—— sterling in the said Royal Bank of Scotland at Greenock, in the name of the said Sheriff Clerk Depute, payable upon orders to be pronounced in said process, with a fifth part more of said principal sum of liquidate penalty in case of failure, and the lawful interest of said principal sum from and after said last mentioned date, and in all time coming till payment and consignation. And we consent to the registration hereof for preservation and execution: IN WITNESS WHEREOF.

8. On the money being deposited in bank, and the deposit receipt therefor lodged with the Clerk of Court, the pursuer's agent will enrol the case for decree of approval of the sale and the proceedings therein, and authorising an interim extract decree to be issued; and on such becoming final, the Sheriff Clerk will issue for delivery to the purchaser an extract decree, as the purchaser's title to the ship, in order that he may have her registered at the Customhouse as his property. But as it may happen that the purchaser

may desire to have the vessel registered and sent to sea before the extract decree can be got, these objects can be attained by getting a copy of the warrant, articles, and minute of sale certified as correct by the Clerk of Court, upon production of which at the Customhouse (the other requisites for registration being also duly complied with) the vessel will be got registered. The formal extract of the decree can be got afterwards. The following will be the forms of the decree of approval of the sale, and of the interim extract decree following thereon.

No. 19. Form of interlocutor approving of the sale.

*Greenock, \_\_\_\_\_.*—The Sheriff-Substitute having considered the process, with the articles of roup and sale, and the minutes and enactments of exposure and sale following thereon, of dates [here specify the various dates of exposure and sale], and in particular the minute of exposure and enactment of sale, of date the \_\_\_\_\_, approves of the sale of the Swedish ship or vessel "Oscar," mentioned in process, and of her boats, apparelling, and appurtenances : Finds that David Dunbar, shipowner in Glasgow, is the purchaser of the said vessel and herforesaid, at the price of £\_\_\_\_ ; and in respect the said David Dunbar has made consignation of the said purchase money as aforesaid, adjudges, decerns, and declares the said Swedish ship or vessel "Oscar," with her boats, apparelling, and appurtenances, to pertain and belong to the said David Dunbar, and ordains him to be put in possession thereof. Farther, allows an extract of this interim decree to be issued by the Clerk of Court in common form, and decerns.

## No. 20. Form of extract interim decree.

## INTERIM DECREE

## APPROVING OF THE SALE, &amp;c., &amp;c.

At Greenock, the \_\_\_\_\_ day of \_\_\_\_\_, in the  
year \_\_\_\_\_.

In the petition and action of sale instituted before the Sheriff Court of Renfrew and Bute at Greenock, at the instance of [here give the names and designations of pursuers and defenders], praying the Court to grant decree and warrant for the said ship or vessel "Oscar," with her boats, apparelling, and appurtenances, then lying arrested in the harbour of Greenock, being publicly roused and sold, and the proceeds of sale, after deducting the expenses of arrestment and the sale and other procedure to follow on the said petition and action, made forthcoming to the pursuers, at least as much as would completely satisfy and pay them the sums of money—principal, interest, expenses, and dues of extract—specified and referred to in the said petition. After sundry procedure, Harry Smith, Esquire, the Sheriff-Substitute at Greenock, decerned and ordained the said Swedish ship or vessel "Oscar," with her boats, apparelling, and appurtenances, to be sold by public roup, after due advertisement, and appointed the purchaser to consign the price in the Royal Bank of Scotland at Greenock, in the name of the Depute Clerk of Court, upon a receipt payable upon such orders as might be pronounced in the said process; and upon the said vessel and her foresaids being accordingly exposed for sale [*or if there have been several exposures say*]—and after several exposures of the said vessel and her foresaids], the judge of the roup preferred Hugh Jamieson, ship chandler, Greenock, to the purchase, at the upset price [*or reduced upset price*] of £\_\_\_\_\_ sterling, the said Hugh Jamieson afterwards declaring that he made

the purchase on behalf of David Dunbar, shipowner in Glasgow, and the purchase money was consigned in the said Royal Bank of Scotland at Greenock, conform to deposit receipt for £—— sterling, in name of the Depute Clerk of Court, dated the —— day of ——, in the year 18—, and the deposit receipt was lodged in process and forms number —— thereof : Sitting in judgment, the said Sheriff-Substitute having considered the articles and conditions of roup and sale, and the minutes and enactments of exposure and sale following thereon, of dates the eleventh day of July, the third day of August, the twenty-eighth day of November, the fourteenth day of December, the thirty-first day of December, and, in particular, the minute of exposure and enactment of sale of date the seventeenth day of January, in the year one thousand eight hundred and seventy-eight, and having heard parties' procurators, approved, and hereby approves, of the sale of the said Swedish barque "Oscar," and of her boats, furniture, and apparelling : Found, and hereby finds, that the said David Dunbar is the purchaser of the said Swedish barque "Oscar," with her boats, furniture, and apparelling, at the upset price of £—— ; and in respect the said David Dunbar has made consignation of the said purchase money as aforesaid, adjudged, decerned, and declared, and hereby adjudges, decerns, and declares the said Swedish barque "Oscar," with her boats, furniture, and apparelling, to pertain and belong to the said David Dunbar, and ordained, and hereby ordains, him to be put in possession thereof. Extracted upon —— pages, by me, Sheriff Clerk Depute of Renfrewshire, at Greenock, this —— day of ——, 18—.

9. As soon as the money is in Court, the pursuer's agent will get his account of expenses for the arrestment, action, and sale, made up and taxed ; and thereafter will enrol for an order upon the Clerk of

Court to pay these out of the sum consigned. The agent's account may include the expenses for harbour dues, fire insurance, watching, and other charges incidental to the safe keeping of the vessel from the date of the arrestment. Smith's Maritime Practice, p. 78. See also Clapperton & Co. v. Ferrin, 8th and 21st January, 1874—(not reported).

10. If there be no other arresting creditor or claimant upon the fund, on a minute and claim of preference being lodged an order will be obtained for payment out of the proceeds of sale of the principal sum, interest, and expenses, for payment of which the action of sale was brought: but should there be other arresting creditors or claimants, the balance of the proceeds of sale, after deducting the expenses of sale, &c., and for safe keeping of the vessel, will form the fund *in medio*, and an order will be made by the Sheriff for claims as in a multiplepoinding.

#### IX.—ACTIONS FOR RECOVERY OF BOTTOMRY BONDS, &c.

1. Actions for the sale of vessels may be brought even where there has been no arrestment in security of a debt owing by her owners, such as for payment of a bottomry bond, for the cost of repairs to a vessel where the repairer retains the vessel in his dock or on his slip (Bell's Commentaries, II., p. 93; Abbot, p. 486), and for the wages of seamen who

have a right of hypothec over the vessel. (Smith's Maritime Practice, pp. 42 and 47; Boyd, pp. 23 and 51; Barclay, p. 16.) The form of petition upon a bottomry bond, No. 21, can easily be adapted to the other cases.

2. Before giving the form of the petition for the sale of a vessel under a bottomry bond it may be useful, for the guidance of the practitioner who is about to prepare the petition, to point out some of the things that are essential to the validity of such bonds.

3. There must be the necessity for raising the money. If the captain or lender has money belonging to the owners in his hands, or if the captain can raise the requisite money on the personal credit of his owners to pay for necessary repairs or supplies, or if he has already obtained the funds from a lender on personal credit without any stipulation for a bottomry bond, he cannot validly grant one.

4. If there is time for and the means of communicating with the owner of the ship without detaining her at the foreign port, it is the master's duty so to communicate, otherwise the bond may be declared invalid. Again, if the requisite money cannot be raised without hypothecating the cargo as well as the ship and her freight, and there be time

for and means of communication with the consignees of the cargo, or, if these are not known, with its shippers, the duty to communicate to them the necessity for raising money, and the intention to hypothecate the cargo before doing so, is even more imperative than in the case of the ship. The Karnak, English Law Reports, 2 A and E 289, and 2 P C 505. The Lizzie, L. R. 2 A and E 254, Veitch *v.* Kolneig, 16th November, 1877, Scotch Law Reporter, vol. XV., p. 96.

5. In such bonds the master usually binds himself personally; but, if the amount of the bond will exhaust the proceeds of ship and freight, thus defeating the master's claim for his wages, the English Courts give him priority over the claims of the bond-holder. The Edward Oliver, L. R. 1 A and E 379. The Daring, L. R. 2 A and E 260. The Eugene, L. R. 4 A and E 123.

6. The wages of the seamen are preferable to the claim of the bottomry bond-holder (Abbot, 10th Ed. p. 533; M'Lachlan, 2d Ed. p. 652), and if these are paid by him he should take an assignment to their claim; and in place of letting them sign the statutory release, he should apply to the Board of Trade to dispense with this, or have the release altered so as to discharge only the bond-holder. The Mobile, Swabey's Adm.

Reports, p. 256. The Janet Wilson, Swabey, p. 261. The Cornelia Henrietta, L. R. 1 A and E 51. The Fair Haven, L. R. 1 A and E 67.

7. Bottomry bonds are generally made payable on, or a certain number of days after, the arrival of the vessel at her port of discharge; and if the bond extends over ship, freight, and cargo, there is usually a provision that bulk is not to be broken until the bond is paid. Until payment is made the holder of the bond is entitled to prevent any dealing with the ship, and if also over the cargo, to prevent the discharge, except subject to his rights over same for the amount in the bond. If no one comes forward to pay the bond, and it extends over the cargo, the bond-holder may apply to the Court for a warrant to land and warehouse the cargo subject to his claims. When the bond is over both ship and cargo, if the owner does not pay the amount due, the consignee usually does so on getting the bond transferred to him so as to operate relief against the ship and freight, which are primarily liable for payment, except to the extent for which the bottomry debt has been incurred for the benefit of the cargo. If the bond pledges the ship alone, this will carry the freight, as freight is an incident of the right to the ship.

8. By the law or usage of England as well as of foreign countries, bottomry bonds are transferable by

indorsation, and this practice is usually followed in Scotland; but there is nothing said as to the competency of this by our institutional writers.

9. If the petition contains no personal conclusions it may be brought before the Sheriff of the county within whose territory the ship is lying, without being preceded by arrestment to found jurisdiction; but, as recommended at page 86, it may be well to precede the action by such arrestment, in accordance with the Act 40 and 41 Vict., cap. 50, section 8, sub-section 4.

No. 21. Form of Petition for sale of a vessel for payment of a bottomry bond, but containing no personal conclusions.

#### PETITION.

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

J—— P—— & Co., merchants in Glasgow [if they have acquired right to the bond by indorsation or assignation, add] indorsees (or assignees) of the bond of bottomry after mentioned, Pursuers;

#### AGAINST

A—— C—— and D—— F——, shipowners in Liverpool, the owners of the ship or vessel "Syria," of Liverpool, presently lying in the harbour of Greenock [or if owners are resident abroad and

their names unknown, say G—— H——, master of the ship or vessel \_\_\_\_\_ of \_\_\_\_\_, and as such representing the owner or owners thereof], Defendants:

The above-named Pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant a decree finding and declaring the sum of £1000, with the sum of £150 being the bottomry premium thereon, and the lawful interest thereof from the [*fill in the date when the bond became payable*] until payment, to be true and lawful bottomry debts affecting the said ship or vessel "Syria," and her boats, apparelling, and appurtenances, now lying in the harbour of Greenock, and that the pursuers have a real lien or burden upon the said ship or vessel and her foresaids for the said sums of money and interest thereof preferably to all others; and also to grant a decree and warrant to sell the said ship or vessel and her foresaids by public roup after due advertisement, and for the proceeds of sale being paid over and applied towards payment to the pursuers of the said sums of money and interest, and of the expenses of process and sale, including the harbour dues, wages of the ship keepers, and other expenses incurred or to be incurred in the safe keeping of the vessel from the time the said bond became payable.

#### CONDESCENDENCE.

1. [Narrate the bond of bottomry, and, if not originally granted, but has been indorsed or assigned to the pursuers, set this forth.]
2. The said ship or vessel having sailed from [*state the port*

*where the bond was granted], arrived at Greenock upon the \_\_\_\_\_, and the said bond became payable on the \_\_\_\_\_, being \_\_\_\_\_ days thereafter; but payment has not been made, and it is necessary that this action be raised for the sale of the vessel.*

---

NOTE OF PLEA IN LAW.

The Pursuers, being the holders of the said bottomry bond, are entitled to have decree pronounced as prayed for:

*IN RESPECT WHEREOF.*

10. The subsequent proceedings for effecting the sale of the vessel will be the same as where the action is founded upon an arrestment of the vessel.

X.—PROCEEDINGS WITH THE VIEW TO THE SALE OF A VESSEL BELIEVED TO BE SO MUCH INJURED AS TO BE A CONSTRUCTIVE TOTAL LOSS, AND TO WARRANT ABANDONMENT TO THE UNDERWRITERS.

1. Misfortunes never come singly, and this is almost always true of accidents to ships. One misfortune is sure to lead to another, and the circumstances detailed in the Form No. 22 confirm this. A vessel called the "Countess," on her passage home from North America with a cargo of deals, oils, &c., was run down in the Channel by another vessel and so much injured as to render it unsafe for the crew to remain on board of her. The vessel was therefore abandoned, but was afterwards picked up by a steamer and towed to Greenock, where the salvors placed her in the hands of the Receiver of Wrecks, as authorised

by the Merchant Shipping Act, 1854, section 468. The owners of the ship, who were in America, on hearing of the circumstances gave notice of abandonment of the vessel to the underwriters, who, however, refused to accept the same. The master, who had with his crew been landed at Liverpool, on learning that the ship had been brought to Greenock, came thither to look after her for the good of all concerned, as it was his duty to do; but the ship and cargo being in the hands of the Receiver of Wrecks, that official refused to allow the master to take charge of her until security should be given for the salvage claim. It being considered that the ship which had run into the "Countess" was to blame for the collision, proceedings were to be taken to recover the loss and damages which had been suffered by the collision. The owners of the cargo wished delivery of the same, but this could not be given till security was provided for the salvage, and when discharged the cargo would have to remain under lien for the freight and for its proportion of the salvage claim, and any other general average charges that had been or might be incurred. For the protection of the rights of all concerned in said complicated circumstances, the following petition was presented to the Sheriff by the master of the vessel, acting for the benefit of whom it might concern. Arnould on Insurance, 3d Ed., vol. II., p. 876. The Judge Admiral Depute had "the power of granting

" warrants and orders upon summary applications of  
" any of the persons interested with regard to . . .  
" vessels which have suffered damage or are in danger;  
" and with regard to damaged goods for the purpose of  
" ascertaining their state and of preventing further  
" loss, such as orders for the landing, warehousing,  
" management, and disposal of damaged goods, and  
" inspection of their said vessels, &c., *reserving the*  
" *rights of parties to be determined in an ordinary*  
" *action*" (supra p. 8). There can be no doubt of the propriety of making such an application to the Court as it secures the nomination of respectable and competent surveyors, and regularity in the proceedings, two things which, if the vessel is declared to be a constructive total loss, and therefore recommended to be sold, will be certain to bring about a speedy settlement with the underwriters.

No. 22. Form of Petition for survey of a vessel with the view to her condemnation as a constructive total loss.

PETITION.

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

William Burnie, residing in Greenock, master of  
the Brigantine "Countess," of Halifax, Nova Scotia,

presently lying in the harbour of Greenock, acting  
for the benefit of whom it may concern, Pursuer;

**AGAINST**

T—— A——, Receiver of Wrecks at the Port of  
Greenock, Defender:

The above-named Pursuer submits to the Court the Condescen-  
dence and Note of Plea in Law hereto annexed, and prays the  
Court

To grant warrant to and nominate and appoint persons  
of competent skill and judgment to pass on board of the  
said brigantine "Countess," to examine and survey her,  
to report upon the nature and extent of the damage she  
has sustained, and make up an estimate of the cost of  
repairing the same, to report what in their opinion would  
be the market value of the said vessel when repaired,  
and to recommend what they consider best to be done  
with the vessel for the good of all concerned. Farther,  
in the event of the said surveyors reporting that it will  
be necessary that the said vessel should have her cargo  
discharged and be thereafter placed in a dry dock to  
enable them to make the said survey, to grant warrant  
to the pursuer to have this done, and to give the requi-  
site security for the said salvage claim, the cargo when  
discharged to remain subject to the preferable claim and  
lien for the freight thereof, and for its proportion of the  
salvage claim and any general average loss payable by  
the cargo, all without prejudice to and under reservation  
of the said abandonment, and to the rights of all parties  
concerned.

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## CONDESCENDENCE.

1. On the \_\_\_\_\_ day of \_\_\_\_\_, 1875, the said vessel, under the pursuer's command, sailed from Halifax aforesaid, bound for Liverpool, with a cargo consisting of deals, oil, &c., and on the 19th day of October last, while the said vessel was in the prosecution of her said voyage, she was run into and struck on the waist on the port side by the ship or vessel "Mary Fraser," whereby the pursuer's vessel sustained great injury in her hull, spars, sails, and rigging, and became leaky.
2. In consequence of the serious injury his vessel had sustained, the pursuer and his crew were not in safety to remain on board of her, and before the said ship or vessel "Mary Fraser" backed clear of the "Countess," which she did about 11 p.m. of the said 19th of October, they went on board of the former vessel.
3. Next morning the pursuer's crew returned on board of the "Countess" (he being unable to go on account of an injury to his knee), and saved some of their effects and the ship's papers, with which they returned on board of the "Mary Fraser," not deeming it safe to remain on board of the "Countess" in her damaged, leaky, and disabled condition.
4. Thereafter the said ship or vessel "Mary Fraser" proceeded on her voyage to Liverpool, where the pursuer and his crew were landed.
5. On the following day, as the pursuer has been informed, the "Countess" was taken in tow by the steamer "Cumbrae," and towed to Greenock, where, with her cargo, she now lies under detention by the defender as the Receiver of Wrecks of that port, in terms of the Merchant Shipping Act, 1854. The value of the property saved is stated in the declaration made by or on behalf of the salvors, and in respect of which she has been so detained,

to be, as far as could be ascertained by the declarant, £1600, but which value is greater than the value of the said vessel and her cargo.

6. The salvors have claimed as salvage for the services rendered by the said steamer and her crew, forty per cent. of the value of the property saved, as the same shall be ascertained.

7. The owners of the "Countess" have tendered an abandonment of the said vessel and her freight to the underwriters thereof, but these parties have refused to accept of the same, and it is therefore necessary, without prejudice to the said abandonment and the rights of all parties interested, that the pursuer should, for the benefit of whom it may concern, have the said brigantine "Countess" surveyed by competent persons, and an estimate made of the cost of repairing her, in order that it may be ascertained whether, having regard to the portion of the said salvage claim which will be payable by the "Countess," any prudent owner uninsured would repair the said vessel.

8. As it may be necessary for the purpose of making the said survey that the cargo should be discharged and the vessel placed in a graving dock, it is also necessary that warrant should be granted for this purpose, and that as the Receiver of Wrecks will not allow any interference with the ship and cargo till security is given for the salvage dues, it is proper that authority be also given for this being done.

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#### NOTE OF PLEA IN LAW.

In the circumstances set forth in the Condescendence, the Pursuer is entitled to have warrant granted as craved, without prejudice to the abandonment and to the rights of all parties concerned.

*IN RESPECT WHEREOF.*

XI.—PROCEEDINGS TO BE TAKEN TO DETAIN A FOREIGN SHIP WHICH HAS CAUSED INJURY TO A BRITISH VESSEL AND IS FOUND WITHIN THE SHERIFF'S JURISDICTION.

1. If a foreign ship does damage to a British ship, the master of the former is apt to make off as quickly as possible in case of legal proceedings being taken against his vessel. To prevent this, the Merchant Shipping Act, 1854, section 527, has given authority to the Sheriff within whose jurisdiction the foreign ship may be found to detain her. The following may be the form of the petition:—

No. 23. Form of Petition to detain a foreign ship.

PETITION.

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

J—— R—— and L—— M——, shipowners in Aberdeen [or R—— W——, master, and as such representing], the owners of the barque "Petrel," of Aberdeen, presently lying at the Tail-of-the-Bank, on the River Clyde, off Greenock, Pursuers;

AGAINST

*[If the name of the master or owner of the ship in fault is known it can be stated, but this is not necessary, as the application is obviously intended to be an ex parte one, and the giving of previous notice might defeat the very object of the application].*

The above-named Pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To issue an order directed to any officer of Customs or other officer named by the Court, requiring him to detain the foreign ship or vessel "Nestor," belonging to the United States of America, presently lying at the Tail-of-the-Bank aforesaid, within the jurisdiction of the Sheriff of Renfrew and Bute, until such time as the owner or owners, master, or consignee thereof, has made satisfaction in respect of the injury done by the said ship or vessel "Nestor" to the said barque "Petrel," or has given security to be approved by the said Sheriff to abide the event of any actions, suit, or other legal proceedings that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon.

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#### CONDESCENDENCE.

1. The pursuers were, at the time of the occurrences after mentioned, and still are, the owners [or the pursuer was at the time of the occurrences after mentioned, and still is, the master] of the said barque "Petrel," and [he, as well as the owners of that vessel] are subjects of Her Majesty.
2. Upon the ——, about 11 p.m., the "Petrel," while lying at anchor in the usual anchorage in Gourock Bay, in the River or Firth of Clyde, with her regulation riding light burning brightly, and the usual anchor watch being at the time kept, was run into and struck on the port bow by the said foreign ship or vessel "Nestor," which was under weigh and outward bound, whereby the "Petrel's" hull was cut into and seriously damaged, and her foremast and bowsprit, with all the spars, rigging, sails, and gear

thereto belonging, were carried away. The "Petrel" was outward bound to Singapore, but the wind and weather were adverse, and she was waiting in said anchorage for a favourable change.

3. In consequence of the said injuries, it will be necessary that the "Petrel" put back to Greenock for repairs.

4. The said injuries to the "Petrel" were caused by the misconduct or want of skill of the master or mariners of the "Nestor." The "Petrel" being at anchor with her regulation riding light burning brightly, and capable of being seen at sufficient distance to have enabled the "Nestor" to avoid the "Petrel," it was the duty of those in charge of the "Nestor" to keep clear of the "Petrel," but this was not done.

5. The pursuers have been informed, and aver that the "Nestor," which, after the collision, had returned to the Tail-of-the-Bank, in the River Clyde, off Greenock, and within the jurisdiction of the said Sheriff of Renfrew and Bute, where she now lies, is about to set sail from the Clyde without making any satisfaction to the pursuers for the said injuries, or giving security for payment of the loss, damages, and expenses the pursuers have suffered, or may suffer, in consequence of the said injury.

6. By the 527th section of the Merchant Shipping Act, 1854, it is enacted: "Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty, or to any of Her Majesty's subjects, by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the Judge of any Court of Record in the United Kingdom, or for the Judge of the High Court of Admiralty, or in Scotland the Court of Session, or the Sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily, that such injury was probably caused by the misconduct or want of skill of the master or mariners

of such ship, to issue an order directed to any Officer of Customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge to abide the event of any action, suit, or other legal proceeding that may be instituted in respect in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any Officer of Customs or other officer to whom such order is directed, shall detain such ship accordingly."

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#### NOTE OF PLEA IN LAW.

The "Petrel" having been injured by the "Nestor," now lying within the jurisdiction of the said Court, and such injury having been caused by the misconduct or want of skill of the master or mariners of the "Nestor," the pursuers are entitled to obtain warrant to detain the "Nestor" as prayed for:

#### *IN RESPECT WHEREOF.*

2. As the Act of Parliament requires that *probable* cause be shewn to entitle the applicant to obtain the warrant to detain, the master and some others of the crew of the injured vessel, who can speak to the facts, should make oath to the truth of the petition as follows:—

#### No. 24. Form of Oath.

*At Greenock, the ——, in presence of H—— S——, Sheriff-Substitute of Renfrew and Bute at Greenock, compeared R—— W——, the master, W—— N——, the chief mate, P—— G——, the carpenter, and G—— W—— and T—— R——, two of the seamen of the barque "Petrel," mentioned in the petition, who,*

being solemnly sworn and examined severally, depone and say that the facts set forth in the 2d, 3d, and 4th Articles of the before written Condescendence are true; and, specially, that the injuries caused to the "Petrel," and mentioned in the Petition, were so caused by the misconduct or want of skill of the master or mariners of the foreign ship "Nestor," mentioned in the Petition and Condescendence: All which is truth, as the deponents shall severally answer to God.

#### No. 25. Form of Warrant.

*Greenock,——.*—The Sheriff-Substitute having considered the foregoing Petition, Condescendence, and Note of Plea in Law, with the before-written Oath, finds that it has been shewn to him that the said injuries to the "Petrel" were probably caused by the misconduct or want of skill of the master or mariners of the foreign ship "Nestor," now lying at the Tail-of-the-Bank, off Greenock, within the jurisdiction of the said Sheriff-Substitute, grants warrant to, and ordains and requires A—— B——, Tide Surveyor, and an Officer of Customs at the Port of Greenock [or C—— D——, Messenger-at-Arms, Greenock; or E—— F——, Sheriff Officer in Greenock] to detain the said foreign ship "Nestor," until such time as the owner, master, or consignee thereof make satisfaction to the owner or master of the said barque "Petrel," in respect of such injuries, or has given security—to be approved by the Sheriff-Substitute—to abide the event of any action, suit, or other legal proceedings that may be instituted in respect of said injuries, and to pay all loss and damages that may be awarded thereon. Farther, appoints a copy of the Petition, Condescendence, and Note of Plea in Law, and Oath, and of this Warrant, to be served on the master of the said ship or vessel "Nestor," by serving such copy upon him personally, or by leaving it for him on board of his said vessel, with the person being or appearing to be in command or in charge of said ship. (*See Merchant Shipping Act, 1854, section 522.*)

XII.—PROCEEDINGS TO SECURE PREFERENCE OF MASTER OR OWNER OF A VESSEL FOR FREIGHT PAYABLE BY CONSIGNEE OF CARGO.

1. At seaport towns there are no disputes more frequent than those between the masters of vessels and the consignees of their cargoes. These disputes sometimes arise through the charterers of vessels claiming the freight payable by the consignee, though they themselves have not paid the shipmaster the charter freight; and in such cases the master enforces his preferable right by holding the cargo till he is paid the freight due to him, or until it is consigned in Court subject to his lien, to await the discharge of the cargo and the ascertainment of the exact amount of the freight and the condition of the cargo. It may happen sometimes that the consignee is not in any hurry for his cargo (such as timber), and he allows it to be landed and stored subject to the lien, as in the case of Form No. 26, leaving it open to him afterwards, on consignation of the freight, to apply to the Court for an order upon the store-keeper for delivery, the money consigned to be the surrogatum for the cargo and freight thereof, and to be subject to the same claims, liens, and preferences, as if the cargo were undelivered. The correctness, competency, and propriety of such proceedings were recognised in the case of *Simey v. Peter*, 6th June, 1865, 3 Macp., p. 883; and the petitions to and warrants by the court

under which the cargo was first landed and stored and afterwards got delivery of upon consignation of the freight in that case, will be re-produced in the Forms No. 26 and No. 27 to follow. In most cases, however, the consignees object to the storing of the cargo, being desirous of getting immediate delivery of it, and therefore consign the money. The petition and warrant in the latter case will be in Form No. 28. The form No. 26 is a petition at the instance of the owner, but it is most commonly at the instance of the master as representing the owners of the vessel, as in Form No. 28.

No. 26. Form of petition to land and store a cargo of timber, subject to the lien of the Master or Owner for the freight.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute, at Greenock.

Robert Peter, Shipowner in London, presently residing in Greenock, sole owner of the ship or vessel "Ocean Farer" of London, presently lying in the harbour of Greenock, Pursuer;

**AGAINST**

Edmiston & Mitchell, Merchants in Glasgow, Defendants:

The above-named Pursuer submits to the Court the Condescendence and Note of Plea in Law hereto annexed, and prays the Court

To grant warrant and authority to the pursuer to unload and discharge the portion of the cargo of teak timber and planks remaining on board of the said vessel into the custody of John Mories & Company, wood measurers in Greenock, to be held by them subject to the lien of the pursuer for payment of the freight of the said cargo, payable under and in terms of the bills of lading therefor, as the same shall be ascertained on the discharge of said cargo, but under deduction of the sum of one thousand and fifty pounds received on account, and subject also to the future orders of Court, all in the same manner and to the same effect as if the said portion of the said cargo had remained on board of said vessel: reserving to the pursuer, on the discharge of the vessel being completed, right to raise and institute proceedings in a competent Court for the sale of such portion of the said cargo discharged under said warrant as may be necessary to satisfy and pay the said balance of the said freight, and the costs and charges the pursuer may have to incur in carrying the said warrant into effect, including the measuring of said timber and planks, and to the defenders their defences as accords of law: farther, to grant warrant to the pursuer, and the Officers of Her Majesty's Customs at Greenock, to enter the said portion of the said cargo at the Custom-house in terms of law.\*

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#### CONDESCENDENCE.

1. By charter-party entered into in England between the pursuer and Thomas Charles Simey, merchant, Sunderland, dated 7th September, 1861, it was *inter alia* agreed that the said ship should sail and proceed to Amherst for orders to load at Bassein,

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\* NOTE.—The prayer of Form No. 28 is fuller than the above.

Akyab, Moulmein, or Rangoon, in the East Indies, one port only, and should anchor off the bankshall or loading depot of the charterers or their agents at either port, or so near thereunto as she might safely get, and there load from the freighters a full and complete cargo of teak timber and planks, twenty-three feet long and upwards, with such timber of shorter lengths as might be required by the master for broken stowage, which the said merchants bound themselves to send alongside the vessel at their risk and expense; all timber and planks when brought alongside, and the ship's ropes once being made fast to the raft, to be at the risk of the ship, and none taken back to the yard that have been ordered by the captain to be sent off, and the vessel being so loaded should forthwith proceed to Plymouth, Queenstown, or Falmouth, at the option of the master, for orders to discharge at London, or a port in the United Kingdom, or at any of Her Majesty's dockyards, or so near thereunto as she might safely get, and deliver the same on being paid freight at and after the rate of four pounds twelve shillings and sixpence, or, if ordered direct to Sunderland, four pounds ten shillings sterling per load of fifty cubic feet, Queen's Customs calliper measure, for all timber and planks of twenty-three feet in length and upwards; two thirds of the said rate for all timber or planks of eighteen and under twenty-three feet in length, and half of said rate for all under, shipped for broken stowage, not being under twelve feet long, and it was by said charter-party further agreed that the said freight was to be paid, on unloading and right delivery of the cargo, by one third in cash and the remainder by approved bills on London at four months date from final delivery, or cash, less discount at the rate of five pounds per cent. per annum, at merchant's option, or in cash at current rate of exchange if ordered to discharge at a port on the Continent between Havre and Hamburgh. And it was further agreed by the said charter-party that the charterer was to have the option of employing

the ship abroad should he give notice of his intention to do so before or as soon as the ship was ready to load her homeward cargo, such employment not to exceed twelve months nor to be less than four months in duration, and the hire being fifteen shillings sterling per month per register ton new measurement, and to be payable month after month by bank bill on London at usance, the first month being payable in advance, all port charges, labour, &c., beyond the services of the crew, to be paid by the charterer, and ultimately the ship was to return to Europe and so complete the charter-party, as the said charter-party which is herein referred to, and a copy of which is herewith produced, in itself more fully bears.

2. On the vessel's arrival at Amherst, in the East Indies, she was ordered by the charterers' agent to proceed to Rangoon, where after some days detention the said charterer exercised theforesaid option of employing the ship abroad, and which was so employed by him for a period of four months, during which she made a voyage on the charterers' account from Rangoon to Penang and back.

3. At the expiry of the said period, and the vessel being at Rangoon aforesaid, ready to load her homeward cargo in terms of the said charter-party, as neither the said Thomas Charles Simey nor Messieurs Gladstone Wyllie and Company, merchants, there, his authorised agents, could furnish a cargo there for the said vessel, it was, by agreement dated 12th December, 1862, written on the back of the said copy charter party, mutually agreed between John Rippon, the master of the said ship, and the said Gladstone Wyllie and Company as the agents for the said Thomas Charles Simey, that the said ship should with all convenient reasonable despatch proceed to Moulmein, to be loaded there with timber, &c., in accordance with the said charter-party, in consideration of his receiving an addition of fifteen shillings per load to the freight

stipulated in said charter-party on the cargo loaded at Moulmein, payable on delivery of the cargo as specified in said charter-party, and the said Gladstone Wyllie and Company thereby further agreed to ship in said vessel at Rangoon, for Europe, fifty tons of cutch at a freight of four pounds sterling per ton of twenty hundred weight, payable on delivery. Thirty-one working laying days to be allowed for loading in Moulmein, to count from the time of the captain going ashore and giving notice that he was ready to load there, as the said agreement which is herein referred to, and a copy of which is herewith produced, in itself more fully bears.

4. The vessel accordingly proceeded to Moulmein, where there were shipped on board of her, by Abraham Cohen, in all six hundred and three squares of teak timber, and two hundred and twenty teak planks, which were to be delivered at the port of discharge, for which the master was to receive orders at Queenstown or Falmouth, whither the said vessel was to sail from Moulmein unto order or to assigns, he or they paying freight for the said goods on right delivery at the rate of five pounds seven shillings and sixpence per ton of fifty cubic feet to the United Kingdom, or to the Continent at ten pounds per cent. additional freight as per charter-party, with primage and average accustomed, conform to bills of lading, dated tenth February, eighteen hundred and sixty-three, granted by the said master, his copy of which is herewith produced.

5. Having been so loaded, the said vessel sailed from Moulmein, and having arrived at Falmouth she there received orders to proceed to Greenock as her port of discharge, and having accordingly proceeded for Greenock, she arrived there upon the 6th day of October, 1863, and now lies in the harbour of Greenock.

6. After the arrival of the vessel as aforesaid, the bills of lading for the said cargo of teak timber, at least one of the said bills of lading, duly indorsed, was presented to the master by Messieurs Edmiston & Mitchell, merchants, Glasgow, the defenders, and they have paid to the pursuer the sum of £1050 to account of the freight of the said cargo mentioned in said bills of lading. Thereupon the discharge of said cargo was proceeded with, and about one third has been delivered to the said defenders.

7. The said defenders have since informed the pursuer that the said Thomas Charles Simey has intimated or caused to be intimated to them that they are not to pay to the pursuer the balance of the freight of the said cargo, and that they, the defenders, will decline to pay the same.

8. A much larger sum is due to the pursuer for the freight payable under the charter-party, than the balance of freight payable under the said bills of lading.

9. The pursuer is not bound to deliver up possession of the remainder of the said cargo till the balance of the said freight has been paid to him in terms of said bills of lading, and the defenders, the said Edmiston & Mitchell, have agreed to the pursuer having the remainder of the cargo on board of said vessel delivered into the hands and custody of a wood measurer in Greenock, to be held by him subject to the pursuer's lien for the remainder of the said freight payable under said bills of lading. Wherefore this petition is presented.

#### NOTE OF PLEA IN LAW.

The pursuer not having been paid the freight due under the charter-party has a preferable right to the freight payable under

the bills of lading, and is entitled to secure such preferable right by having the cargo landed and stored subject to his lien over the same for the freight :

*IN RESPECT WHEREOF.*

2. After the foregoing petition was presented to the Sheriff, an order for service was pronounced and executed, and thereafter he granted the following warrant.

**FORM OF WARRANT.**

*Greenock, 16th October, 1863.*—The Sheriff-Substitute having resumed consideration of the petition and charter-party, agreement, and bill of lading referred to therein, in respect that no appearance has been lodged by the respondents, grants warrant and authority to the petitioner to unload and discharge the remainder of the cargo of teak timber and planks mentioned in the petition, and also to enter the cargo as craved. Further, reserves to the petitioners and respondents all as craved, and decerns.

(Signed)      H. L. T.—.

3. Under the foregoing warrant the cargo was entered, discharged, and placed in a timber pond, and in a few weeks afterwards, the following procedure, which will be given in full (adapted to new form), as it and what had previously taken place on the owner's petition were afterwards approved of by the Supreme Court.

NOTE.—An action of multiplepoinding having afterwards been raised in the Court of Session, the owner of the vessel was found entitled to the freight.—*Simey v. Peter, supra p. 118.*

No. 27. Form of petition by consignees for delivery of cargo which has been landed and stored subject to the lien for freight.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

Edmiston & Mitchell, Merchants in Glasgow,  
Pursuers;

**AGAINST**

Robert Peter, Shipowner in London, presently residing in Greenock, sole owner of the ship or vessel "Ocean Farer," of London, presently lying in the harbour of Greenock, and Thomas Charles Simey, merchant, Sunderland, the charterer or alleged charterer of the said ship or vessel, Defenders:

The above-named Pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To grant a warrant appointing intimation of the Petition to be made to the defender, Robert Peter, either personally, if still in Greenock, or otherwise, through his agents, Messrs R. & S. Neill, writers in Greenock, and to the other defender, Thomas Charles Simey, through his agents, Messrs Smith & Wright, writers, Glasgow, and ordain them to enter appearance within a certain short space if they have any objection to the granting of the prayer hereof, and upon again considering this appli-

cation, to appoint the pursuers to pay to John Mories & Company, timber measurers in Greenock, the store and other charges which have already been incurred in consequence of the landing and storing of the teak timber and planks discharged from the said vessel, and thereafter to consign in the hands of the Clerk of Court the sum of £\_\_\_\_\_, being the balance remaining in their hands of the freight of the voyage of said vessel, therein to remain subject to the future orders of Court, and *simul et semel* grant warrant and authority to the said John Mories & Company, to make delivery of the foresaid teak timber and planks to the pursuers upon production of a certificate under the hands of the Clerk of Court of such consignation having been made: Reserving entire the rights and pleas of parties as accords, and in the event of unnecessary opposition being made to the present application, to find the party making the same liable in expenses and decern therefor.

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#### CONDESCENDENCE.

1. The pursuers are *bona fide* and onerous holders of a bill of lading, dated Moulmein, the 10th day of February, 1863, granted by John Rippon, master of the said ship or vessel "Ocean Farer," for a cargo of 603 squares of teak timber, and 220 teak planks, carried by the said vessel from Moulmein to Greenock, in terms of said bill of lading, which is herewith produced and referred to.
2. Upon the arrival at Greenock of the said vessel, on or about the 5th day of October, 1863, the pursuers presented the foresaid bill of lading to the master of the said vessel, and on the 7th day of October, thereafter they paid to the defender, Robert Peter,

the sum of £1050 sterling to account of the freight thereby stipulated for, whereupon the discharge and delivery of the said cargo was commenced and was proceeded with until about one third of the entire quantity had been so discharged and delivered. Upon the 8th October, 1863, the pursuers received the notification from Messrs Smith & Wright, writers in Glasgow, which is here-with produced and referred to, intimating on behalf of the defender, Thomas Charles Simey, that he claimed payment of the freight payable by the pursuers as consignees of the cargo of the "Ocean Farer" in respect of a charter-party dated 7th September, 1861, entered into between the defender, Robert Peter, and him.

3. On receipt of this notification the pursuers communicated the same to the defender, Robert Peter, at same time informing Messrs Smith & Wright that the pursuers had previously made the partial payment of freight to the said Robert Peter as above mentioned. In consequence of this intimation on the part of the said Thomas Charles Simey the further discharge and delivery of the cargo was stopped, to the great detriment and inconvenience of the pursuers.

4. Thereafter, and on 16th October, 1863, a petition was presented to this Court by the defender, Robert Peter, in which, after setting forth the said charter-party and other particulars, he craved warrant and authority to unload and discharge the remainder of the said cargo of teak timber and planks still on board of the said vessel into the custody of John Mories & Company, wood measurers in Greenock, to be held by them subject to a lien for payment of the freight of the said cargo, and subject to the future orders of Court. Under this petition and procedure following thereon, to which reference is made, the remainder of the cargo has been unloaded, and is at present in the custody or under the charge of the said John Mories & Company.

5. The freight note herewith produced has since been furnished to the pursuers, according to which the gross freight of the entire cargo amounts to the sum of £3125 3s 6d sterling, and after deducting the said sum of £1050 paid to the defender, Robert Peter, as aforesaid, a balance of £2075 3s 6d sterling is brought out as still being due, but from that balance there falls to be further deducted certain items in respect of short delivery, interest, and discount, amounting in all to £55 10s, conform to and as specified in corrected statement of freight herewith produced, and which being so deducted reduces the balance to £2019 13s 6d, which balance the pursuers are and have all along been prepared to pay to the party having right thereto on obtaining delivery of the remainder of the cargo.

6. The pursuers have no concern with or interest in any disputes or differences which may exist between the defenders, Robert Peter and Thomas Charles Simey, but in the meantime the pursuers having entered into contracts for the disposal of the said cargo, considerable loss and damage, as well as serious inconvenience, have been and are likely to be still further caused by the failure of the master or owner of said vessel to make delivery to the pursuers of the remainder of the said cargo as aforesaid, and that irrespective of the store charges and other expenses accruing from the said landing and storing, which are daily increasing.

7. The pursuers, with a view to lessen the said loss and damage as well as to obviate further expense in store rents, made offer to consign the foresaid balance of freight, being the amount of the alleged lien on the said remainder of the cargo of teak timber and planks, upon receiving delivery thereof from custodiers, but this offer having been rejected or at all events not accepted of or agreed to, the pursuers now repeat their said offer judicially, and are ready to consign the amount in the hands of the Court;

reserving entire all their rights and claims of damage and otherwise, and all competent answers or objections thereto as accords.

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**NOTE OF PLEA IN LAW.**

The pursuers being ready and willing to pay the storage and other charges on the timber, and to consign the balance of freight due, are entitled to obtain warrant for delivery of the said timber, under reservation of the right of parties :

***IN RESPECT WHEREOF.***

*Greenock, 4th November, 1863.*—The Sheriff-Substitute having considered the foregoing petition, appoints intimation thereof to be made to Robert Peter and Thomas Charles Simey complained on, or to their known agents, by serving each of them with a copy thereof and of this deliverance, and ordains them, in case they intend to state a defence, within twelve hours after service to lodge a notice of compearance in the hands of the Clerk of Court with certification.

(Signed) H. L. T.—.

*Greenock, 4th November, 1863.*—I accept service of the foregoing petition and interlocutor on behalf of Robert Peter, respondent, 1 P.M.

(Signed) R— N—, Pror.

*Greenock, 4th November, 1863.*—I accept service of the foregoing petition and interlocutor on behalf of Thomas Charles Simey, 1 P.M.

(Signed) W. M'C—, Pror.

*Greenock, 5th November, 1863.*—Act. King—Alt. M'Clure & Neill.—The respondent Simey consents to the prayer of the petition being granted.

(Signed) T— K—, for Petrs. (Signed) W. M'C—, Pror.  
for defender Simey.

The respondent Peter's procurator stated his defence to be that the defender Peter is the owner of the "Ocean Farer," and is entitled to receive the whole freight of the cargo mentioned in the petition, the balance of which, after deducting the sum of £1050 paid to account, amounts to £2075 3s 6d, per account annexed to petitioner's letter dated 28th October last, herewith produced. The defender Peter claims said sum of £2075 3s 6d under and in terms of the bill of lading and the charter party between him and the respondent Simey, and agreement written on back of same between Gladstone, Wyllie & Co., Simey's agents, and the master of the vessel. The bill of lading and charter party are herewith produced and herein referred to. For payment of said sum of £2075 3s 6d the defender Peter has a lien over the portion of the cargo in Mories & Co.'s custody, under your Lordship's warrant dated 19th October, 1863, and is not bound to give up possession without payment. He is entitled to receive the said sum of £2075 3s 6d in preference to Simey, the charterer, who has paid the respondent Peter no part of the freight.

(Signed) R—— N——, Pror. for Peter, Defender.

Peter's statements not admitted.

(Signed) T—— K——, Pror for Petrs.

*Greenock, 5th November, 1863.*—The Sheriff-Substitute having heard parties' procurators on the closed record, appoints the petitioners to pay to the said John Mories & Company the store and other charges which have already been incurred in consequence of the landing and storing mentioned in the petition, reserving for future discussion the question—who is ultimately to bear those charges? and thereafter to consign in the hands of the Clerk of Court the balance of the said freight remaining in their hands, there to remain subject to the future orders of the Court, and subject to all the liens and claims upon it which would be available to any party upon the cargo or freight while the said cargo

remained in its present custody; and, further, grants warrant to to the said John Mories & Company to deliver the remainder of the cargo to the petitioner upon production of a certificate under the hands of the Clerk of Court of such consignation having been made, and reserves for farther discussion all the rights and pleas of parties.

(Signed) H. L. T—.

No. 28. Form of petition to land a cargo of sugar, and procedure where consignee of same required immediate delivery, and at once consigned freight.

#### PETITION.

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

W— J— R—, Master of the barque "R. B.  
C—, of Saint John, New Brunswick, presently  
lying in the harbour of Greenock, and as such mas-  
ter representing the owners of the said vessel,  
Pursuer;

#### AGAINST

A— S— & Co., Sugar Refiners in Greenock,  
Defenders :

The above-named Pursuer submits to the Court the Condescen-  
dence and Note of Plea in Law hereto annexed, and prays the  
Court

To grant warrant to the pursuer to unload and discharge  
from his said vessel the "R. B. C—," the cargo now  
on board of the same, consisting of 3,211 baskets of  
sugar, 634 bundles of rattans, and 50 pieces of bamboo,  
and to place the same in one of the warehouses in

Greenock wherein it is customary to store sugar, therein to remain subject to the pursuer's lien over the same for the sum of £3,597 12s 3d sterling, being the balance of freight, demurrage, and other charges due and payable to the pursuers by T—— B—— & Co., merchants in London, under and in terms of a charter party entered into between Messrs W. T. H—— & Co., agents for the owners of the said vessel, and the said T—— B—— & Co., dated the 11th and 12th days of November, 1875, but such lien being limited, so far as the said cargo is concerned, to the freight payable by the defenders for same, in terms of the bills of lading therefor, being for the said sugar at the rate of £3 sterling per ton of twenty cwt net weight to be delivered, the rattans and bamboo being free of freight, and also for the expenses and charges of entering, weighing, storing, and insuring the said cargo, and all other charges and expenses incidental to the carrying out of the said warrant, including the expenses of process, and subject to the future orders of Court: Also to grant warrant to the pursuer and the officers of Her Majesty's Customs at Greenock, to enter the said cargo in name of the pursuer at the Custom-house, and to the keeper of the said warehouse to receive the same as customary, reserving to the pursuer or owners of the said vessel all competent action for the sale of the said cargo for payment of the said freight thereof, payable in terms of said bills of lading therefor, and of the said expenses and charges, and to all concerned their defences to said action as accords.

#### CONDESCENDENCE.

1. By charter-party entered into at London on the 11th and 12th days of November, 1875, between the said W. T. H—— &

Co., agents of the owners of the said vessel "R. B. C——, and the said T—— B—— & Co., brokers and charterers, it was, *inter alia*, agreed that the said vessel should receive and take on board at London such goods and merchandise as the said charterers might send alongside for shipment, and being so loaded should proceed to Brisbane and there deliver the cargo : That after being discharged there the said vessel was to proceed to Newcastle, New South Wales (the said charterers providing ballast <sup>and</sup> or cargo as ballast to the extent of 250 tons), and there load a full and complete cargo of coals in any safe loading place, always afloat, and after being so loaded the vessel was to proceed to any one of the ports named on the margin of the said charter-party as might be ordered by the charterers' agents at Newcastle, and there, in any safe place, always afloat, as ordered by the charterers' agents, deliver the same to said freighters or their agents ; that after the discharge of the said cargo of coals at the port at which she might be ordered, the said vessel should there, or at any other port as agreed per schedule in the margin of said charter-party, load a full and complete cargo of lawful merchandise, and being so loaded, should therewith proceed to Cork or Falmouth for orders, if not ordered direct, to discharge at a good and safe port in the United Kingdom or Continent, between Havre or Hamburg, both inclusive, or as near thereto as she might safely get, and the same always afloat ; that thirty running days (Sundays and holidays excepted) were to be allowed the charterers for loading the said vessel at ports of loading under the said charter-party, and the vessel was to be discharged as customary at final port of discharge ; that demurrage over said laying days was to be paid by the said charterers at the rate of four pence per register ton per day, and that in consideration of the said voyages, and upon true delivery of the said cargo, the said charterers agreed to pay for the use and hire of the said vessel the sum of £4,400 in full of all port charges, pilotages, trimming, dock, harbour, and river dues, lights, consulages, primage, pierage, and all other dues

and port charges whatsoever, payment of said sum to be as follows, viz :—£1,000 to be advanced in cash after final sailing from Gravesend; up to £200 for ship's disbursements at Brisbane; up to £200 for ship's disbursements at Newcastle, New South Wales; up to £500 at final port or ports of loading, and balance on true and right delivery of homeward cargo in cash; all advances to be subject to a deduction of six per cent. to cover interest and insurance, as a copy of the said charter-party herewith produced, and herein referred to, in itself more fully bears.

2. In terms of the said charter-party, the said vessel after being loaded at London, sailed on the said voyage from London to Brisbane, thence to Newcastle, New South Wales, and thence to Batavia, where there were shipped on board of said vessel by Messrs D— & Co. 634 bundle rattans, to be delivered at the port of discharge, free of freight, being for dunnage, conform to bills of lading dated the 11th day of November, 1876.

3. Thereafter the said vessel proceeded as directed from Batavia to Sourabaya, where there were shipped on board of her by D— & Co. (first) 1158 baskets of sugar, marked S.H., and described as weighing nett 4223  $\frac{6}{100}$  piculs, to be delivered at port of discharge unto order, or to his or their assigns, he or they paying freight for the said goods at the rate of 60/- if ordered to a port in the United Kingdom, or 62/6 if ordered to the Continent, conform to the bills of lading granted by the pursuer, dated 11th December, 1876; (second) 293 baskets of sugar, and described as weighing nett 1100 piculs, and marked S.H., to be delivered at port of discharge unto order, or to his or their assigns, he or they paying freight for the said goods at the rate of 60/- if ordered to a port in the United Kingdom, or 62/6 if ordered to the Continent, conform to other bills of lading granted by the pursuer, dated 11th December, 1876, and (third)

215 baskets of sugar, marked S.H., and described as weighing nett 780  $\frac{41}{100}$  piculs, to be delivered at port of discharge unto order, or to his or their assigns, on he or they paying freight for the said goods at the rate of 60/- if ordered to a port in the United Kingdom, or 62/6 if ordered to the Continent, conform to bills of lading granted by the pursuer, dated 13th December, 1876; and there were also shipped at Sourabaya, by B—— & Co., as agents of the said Messrs D—— & Co., (first) 1213 baskets of sugar, marked C.A., and described as weighing nett 4500  $\frac{87}{100}$  piculs, to be delivered at port of discharge unto order, to their assigns, on paying freight on said goods at the rate of £3 British sterling per ton of twenty cwt. nett weight delivered, if ordered to a port in the United Kingdom, or £3 2s 6d per ton if ordered to the Continent, conform to bills of lading granted by the pursuer dated 4th December, 1876; (second) 332 baskets of sugar, marked D.C., and described as weighing nett 1165  $\frac{60}{100}$  piculs, to be delivered at port of discharge unto order, or their assigns, on paying freight for the said goods at the rate of £3 British sterling per ton of twenty cwt., nett weight delivered, if ordered to a port in the United Kingdom, or £3 2s 6d per ton if ordered to the Continent, conform to bill of lading granted by the pursuer dated 23d December, 1876; and (third) 50 pieces bamboo, deliverable at port of discharge, free of freight, being for dunnage, conform to bills of lading dated 23d December, 1876. The said bills of lading are herein referred to, and the copies thereof are herewith produced.

4. After being so loaded the said vessel, on 28th December, 1876, set sail from Sourabaya bound for Falmouth for orders, where she arrived on the 30th day of May, 1877, and having got orders for Greenock she proceeded to that port, and arrived there on the 6th, and was reported at the Custom-house of Greenock upon the 7th, both days of June, 1877.

5. The said cargo of sugar has been claimed by the defenders as the purchasers of, and holders of the bills of lading for the same; but while the defenders claim delivery of the said cargo, and the pursuer is ready and willing to deliver the same to them on payment of the freight thereof, conform to said bills of lading, the defenders have informed the pursuer that they cannot pay him the freight mentioned in the said bills of lading, having been interpellated from doing so by or on behalf of said T—B— & Co.

6. The said T—B— & Co., under and in terms of the said charter-party, are justly addebted and resting owing to the pursuer as master, and representing the owners of the said vessel as aforesaid, the following sums of money, viz.:—The foresaid sum of £4400 sterling, being the charter freight payable by the said T—B— & Co. in terms of the said charter-party; item, the sum of £360 15s sterling, being for demurrage for thirty-nine days at the rate of fourpence per register tonnage of said vessel per day, which is 555 tons, incurred by the said T—B— & Co. to the said vessel at the foresaid port of Batavia; item, the sum of £268 5s, being for demurrage for twenty-nine days at the foresaid rate of fourpence per register ton per day, incurred by the said T—B— & Co., to the said vessel at Sourabaya, amounting, the said sums together, to £5029, conform to account dated June, 1877, and marked "Number I." herewith produced and herein referred to, but under deduction of the sums amounting to £1431 7s 9d, credited in said account "Number I.", leaving a balance of £3597 12s 3d sterling owing to the pursuer.

7. The said T—B— & Co., under and in terms of the said charter-party, are also justly addebted and resting owing to the pursuer as master, and representing the owners of the said vessel

as aforesaid, the sum of £158 9s 4d for cost of providing ballast at Brisbane, and for sundry commissions and others charged to the pursuer by the said T—— B—— & Co.'s agents abroad, in breach of the charter-party, and commissions and others which the pursuer had to pay and incur in consequence of the said T—— B—— & Co. having failed to provide money for disbursements abroad and otherwise, conform to account dated June, 1877, and marked "Number II." herewith produced and herein referred to and held as repeated; but under deduction of the sums credited therein, amounting to £132 5s, leaving a balance of £26 7s 4d sterling owing to the pursuer.

8. By the said charter-party it was *inter alia* agreed that the pursuer and the owners of the said vessel should have a lien on the homeward cargo of said vessel for the balance of freight and demurrage, and thus the pursuer has a lien over the said cargo of sugar, rattans, and bamboo (being the homeward one referred to in the said charter party) for payment of the said balance of £3592 12s 3d, to the extent of the freight specified in the said bills of lading.

9. The pursuer is not bound to deliver the said cargo to the defenders until he has been paid the said freight mentioned in the bills of lading, or until the estimated amount of the same is consigned in Court.

10. As by keeping the said sugars on board of the said vessel loss of weight will be sustained by the drainage thereof, and loss and damage will be sustained by the detention of the vessel, it is right and proper that it should be discharged from the said vessel, and stored until payment or consignation of the said freight is made.

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**NOTE OF PLEA IN LAW.**

The pursuer is not bound to deliver up the said cargo until either payment or consignation of the freight, and failing payment or consignation is entitled to have the cargo discharged and stored, subject to his lien for the freight:

***IN RESPECT WHEREOF.***

*Greenock, 15th June, 1877.*—The Clerk of Court reports caveat for A—— S—— & Co., the defenders.

*Eo die.*—The Sheriff Substitute having considered the Petition, Condescendence, Plea in Law, and caveat and documents produced, appoints the parties to be heard this day.

(Signed)      H—— S——.

*Eo die.*—The Sheriff-Substitute having considered the whole process and heard parties' procurators, on consignation being made by the defenders in the hands of the Clerk of Court of £2,000 (under deduction of the consignation dues), being the estimated amount of the freight payable by them under the bills of lading for the cargo mentioned in the petition and condescendence, ordains the pursuer to deliver the said cargo to the defenders in terms of the said bills of lading, the said sum of £2,000, under deduction aforesaid, to be the surrogatum for the said freight and cargo, and to be subject to the future orders of the Court, and to the same claims and rights of retention at the defenders' instance that the freight would have been subject to had it remained unconsigned, and to the same rights, claims, and liens at the instance of the pursuer that such cargo would have been subject to had it remained on board of the vessel and undelivered, and in particular to the pursuer's lien for the sum of £3,597 12s 3d mentioned in the petition, so far as the same may be found to be due and payable

to the pursuer: Reserving always to Messrs T—— B—— & Co., mentioned in the petition, their defences to such rights, claims, and liens, and also any claims they themselves may have to the said freight, and to the pursuers and defenders their answers thereto as accords; it being understood that in the event of the sum consigned being found, on discharge of the cargo being completed, to be less than the true amount of the said freight, the defenders will consign the deficiency, but should it be found to be more the defenders will be entitled to uplift the surplus. Farther, grants warrant to cite the defenders, A—— S—— & Co., upon an *induciae* of seven days, by serving them with a copy of the foregoing Petition, Condescendence, and Plea in Law, and of this Warrant, and Ordains the defenders, if they intend to show cause why the prayer of the petition should not be granted, to lodge in the hands of the Clerk of Court at Greenock a notice of appearance within the *induciae* of citation hereon, under certification of being held as confessed.

(Signed) H—— S——.

*Greenock, 15th June, 1877.*—The sum of £2000 consigned by the defenders, A—— S—— & Co., less dues of consignation, being £5 1s 3d.

(Signed) J—— A——, Sh. Clk. Dep.

*Greenock, 18th June, 1877.*—I accept service of the foregoing petition and warrant on behalf of the defenders, and dispense with formal service.

(Signed) J—— M——.

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NOTE.—An action of multiplepoinding was afterwards raised, and the master of the vessel was found entitled to the consigned money.

XIII.—PROCEEDINGS FOR RE-DELIVERY OF GOODS FOR WHICH  
MASTER OF VESSEL REFUSES TO GRANT BILLS OF LADING  
EXCEPT WITH OBJECTIONABLE PROVISIONS OR  
QUALIFICATIONS.

1. The master of a vessel is bound to sign proper bills of lading after he has taken the goods on board, and if he refuses the shipper is entitled to have the goods put ashore again at the ship's expense. M'Lachlan on Shipping, 2d Ed., p. 368; Peek v. Larsen, L. R. 12 Eq. 378; Falk v. Fletcher, 34 L. I. (C. P.) 146.
2. The case which most frequently occurs when re-delivery of the goods has to be insisted on, is when the master refuses to sign bills of lading except with some qualification not warranted by the circumstances. For example, a foreign vessel has taken on board a cargo such as iron, which, with the view to the merchant getting bills of lading for a specific weight, has been carefully weighed over alongside the ship, at sight of the master or mate, before being taken on board. Notwithstanding this weighing over, however, and after the goods have all been put on board, the master refuses to sign bills of lading except with the qualification "weight unknown," and intimates his intention of proceeding to sea with the goods. To interdict the master from sailing, when the ship is a foreign one, is useless, as the vessel may proceed to sea during the night, as the author has known

them to do even though interdicted, and the master being a foreigner is not likely ever to return again. The only effectual remedy, therefore, for the shipper of the cargo is to apply to the Sheriff for warrant to arrest and (if in harbour) to dismantle the vessel until "clean" bills of lading are delivered, or the goods have been discharged out of the vessel, and until the master shall find caution for all loss and damages that his refusal to sign clean bills of lading has caused to the shipper. The following will be the form of the Petition :—

No. 29. Form of Petition for arrestment of a vessel where master refuses to grant bills of lading.

In the Sheriff Court of Renfrew and Bute,  
at Greenock,

M—— & C——, Iron Masters, Glasgow, Pursuers ;

**AGAINST**

A—— P——, Master of the Spanish ship or vessel  
"Maria," presently lying in the harbour of Greenock,  
and as such master representing the owner or owners  
of the said vessel, Defender.

The above-named Pursuers submit to the Court the Condescendence and Note of Pleas in Law hereto annexed, and pray the Court

To grant a decree against the above-named defender, ordaining him instantly to re-deliver to the pursuers four hundred tons of iron shipped by them on board of the said vessel at Greenock ; and in the event of the

defender not obeying such decree within such time as the Court shall allow him for fulfilment thereof, to grant warrant to Officers of Court, with such assistance as they may require, to pass on board of the said vessel, and to unload and discharge the said four hundred tons of iron from her, and to deliver the same to the pursuers : Further, to grant a decree against the defender ordaining him to make payment to the pursuers —First, of the costs (if incurred) attending the unloading and discharging of the said iron, as the same may be ascertained in the course of the process to follow hereon ; Second, of the sum of one hundred pounds sterling for loss and damages ; Third, the expenses of process : Further, in the meantime, and on the dependence, to grant warrant to Officers of Court to lawfully fence and arrest the said ship or vessel "Maria" within the jurisdiction of the Sheriff of Renfrew and Bute, therein to remain under sure fence and arrestment at the pursuers' instance, aye and until the said four hundred tons of iron shall be unloaded and discharged therefrom, and re-delivered to the pursuers ; and also in the meantime, on the dependence, to grant warrant to Officers of Court to lawfully fence and arrest all and sundry ships, and shares of ships, and barks, boats, goods, gear, debts, effects, and sums of money, and all other moveable effects belonging or addebtied to the defender, wherever or in whose hands soever the same may be, within the jurisdiction of the said Sheriff, and to take the sails, rudders, and anchors from the said vessels (the same being always in a safe harbour) all to remain under sure fence and arrestment at the pursuers' instance, aye and until sufficient caution and surety be found acted in the books of the said Sheriff Court that the same shall be made forthcoming to the pursuers as accords of law ;

and if need be to charge all Judges and Magistrates, Officers of Her Majesty's Army and Navy, and others whom it effects, to concur with the said Officers of Court in putting the said warrant to all due and lawful execution.

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#### CONDESCENDENCE.

1. Upon the \_\_\_\_\_ the defender, as master of the said vessel, entered, at Greenock, into a charter-party with the pursuers, for the conveyance in his said vessel of a cargo of iron from Greenock to Bilboa, freight for the same to be paid at the rate of \_\_\_\_\_ per ton, conform to the said charter-party, which is herewith produced and herein referred to.
2. The pursuers intended to sell the said iron as per the bills of lading for the same, and for this purpose they arranged with the defender that the iron, before being taken delivery of by him or put on board of his said vessel, should be weighed alongside in presence of the mate or other person entrusted by the defender to see the iron weighed.
3. Accordingly all the iron sent by the pursuers alongside of the said vessel for shipment in her was weighed by a skilled [if licensed, say so] weigher, in presence of the mate of the said vessel, who granted receipts for the aggregate weight of each day's shipments. These receipts are herewith produced, and show that the total quantity received by the defender, or the mate on his behalf, was four hundred tons.
4. Upon the shipment of the cargo being completed, the pursuers tendered to the defender bills of lading, in due and customary form, for the said four hundred tons of iron, which is of the value of £\_\_\_\_\_, and required him to sign and deliver the same to the

pursuers, but the defender refused to do so unless the pursuers would allow him to qualify the bills of lading by adding the words "weight unknown."

5. The pursuers declined to accept the bills of lading with such a qualification, and intimated to the defender that unless he signed the bills of lading without such qualification he must re-deliver the iron to them in order that they might ship it in another vessel, but the defender refuses to do so, and threatens to proceed on his said voyage with the said iron on board of his said vessel, and without delivering to the pursuers bills of lading as required by them, and as he is bound to do.

6. The pursuers have suffered, and will suffer, loss and damages to the extent of at least £100, in consequence of the defender's said failure to sign and deliver to the pursuers proper bills of lading in due and customary form for the said four hundred tons of iron, and of its therefore becoming necessary that the said iron should be discharged from the defender's vessel and re-shipped in another.

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#### NOTE OF PLEAS IN LAW.

1. The iron shipped by the pursuers on board of the defender's vessel having been weighed over to him immediately before shipment, and the weight having thus been clearly ascertained, the pursuers were entitled to have bills of lading delivered to them for such weight without the qualification added of "weight unknown."

2. The defender having refused to deliver said bills of lading, the pursuers are entitled to obtain re-delivery of their goods, and failing this being given by the defender, to have warrant granted for the discharge of the iron.

3. As the defender has threatened to proceed to sea with his

vessel, with the said iron on board, without granting to the pursuers the bills of lading which they have required of him, the pursuers are entitled to have the vessel arrested and dismantled until the iron is removed from the vessel.

*IN RESPECT WHEREOF.*

XIV.—PROCEEDINGS FOR RECOVERY OF SALVAGE.

1. When a ship or boat is stranded, or otherwise in distress, on the shore of any sea or tidal water within the limits of the United Kingdom, the Merchant Shipping Act, 1854, section 458, provides that if services are rendered by any person (1) in assisting such ship or boat, (2) in saving the lives of the persons belonging to such ship or boat, or (3) in saving the cargo or apparel of such ship or boat, or any portion thereof, and if any wreck is saved by any person other than a Receiver within the United Kingdom, there shall be payable by the owners of said ship or boat, cargo, apparel, or wreck, to the person by whom such services, or any of them, are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services, or the saving of such wreck, the amount of such salvage and expenses (which expenses are in the subsequent sections of the Act included under the term salvage) to be determined in case of dispute in manner directed by the Act.

2. The claim for salvage may be brought for adjudication before two Justices, when the amount claimed does not exceed £200 (Merchant Shipping Act, 1854, sec. 460), or when the property saved does not exceed £1000 in value (25 and 26, cap. 63, sec. 49); and by the same section of the last-mentioned Act there is conferred on the Sheriff the same jurisdiction as was given to two Justices by the first-mentioned Act. Where the claim exceeds £200, or the property saved exceeds £1000, the proceedings must take place before the Court of Session.

3. In the case of wreck, the proceedings are to take place before the Sheriff at or near the place where it is found, and in the case of services rendered to any ship or boat, or to the persons, cargo, or apparel thereof, before the Sheriff resident at or near the place where the ship or boat is lying, or at or near the first port or place in the United Kingdom into which the ship or boat is brought after the occurrence of the accident by reason of which the claim of salvage arises (Act of 1854, sec. 460).

4. The application to the Sheriff or Justices may be made by either the salvors or the owners of the property saved, or by their respective agents (sec. 460), so that if the claimants are dilatory in instituting proceedings, the owners of the property saved may take the initiative. This is highly necessary, as in

most cases the crew of a ship do not reside at the port at which the ship may first arrive after the salvage services have been rendered, and if their evidence be not at once taken, the owners of the ship or cargo must either, at great expense, detain the crew, or lose the benefit of their evidence.

5. The proceedings before the Sheriff (or Justices) begin by a petition, which may be in the following form. It may include a prayer for warrant to arrest on the dependence—(Merchant Shipping Act, 1854, sec. 533).

#### No. 30. Form of petition for award of salvage.

##### PETITION.

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In the Sheriff Court of Renfrew and Bute  
at Greenock,

A—— B——, master and owner of the passenger paddle steamer “ H——,” of Glasgow, now or lately trading as a passenger steamer between Glasgow and Arran, *via* Dunoon and Rothesay, and [here state names and designations of the crew of the steamer], Pursuers;

##### AGAINST

C—— D——, merchant, Greenock, and E—— F——, merchants there, registered owners of the steamer G——, of Greenock, Defenders:

The above-named pursuers submit to the Court the Condescendence and Note of Plea in Law hereto annexed, and pray the Court

To determine a dispute that has arisen between the pursuers and the defenders as to the compensation payable by the defenders to the pursuers for certain salvage services rendered by the said steamer "H—," and the pursuers, to the said steamer "G—," upon the — day of —, and to award and decern that the defenders shall pay to the pursuers the sum of £200, or such other reasonable sum not exceeding £200 as the Sheriff of Renfrew and Bute or his Substitute may fix, for theforesaid salvage services, and to award that the costs of this application, and consequent procedure, shall be paid by the parties to the same in such manner and in such shares and proportions as the said Sheriff or his Substitute may think proper; and in the meantime, and on the dependence of this petition, to grant warrant to Officers of Court to lawfully fence and arrest all ships, goods, debts, sums of money, and effects belonging or due to the defenders within the jurisdiction of the Sheriff of Renfrew and Bute, all therein to remain under sure fence and arrestment at the instance of the pursuers, aye and until sufficient caution and surety be found acted in the books of the said Sheriff Court of Renfrew and Bute that the same shall be made forthcoming to the pursuers as accords of law.

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CONDESCENDENCE.

1. Upon the 13th day of July, 1871, the said steamer "H—," and her master and crew, rendered salvage services to the passenger steamer "G—," then trading as a passenger steamer between Glasgow and Arran and other intermediate places, to her crew, and to the passengers then on board, numbering from 100 to 150, by assisting and saving the said paddle steamer "G—," and saving

the lives of her said crew and passengers, while the said steamer "G——" was in distress and in danger of being drifted on the rocks on the Garrochhead shore, and of becoming a wreck there, as will appear from the following particulars, viz:—

2. Upon the said 13th day of July last, 1871, between the hours of two and four afternoon, the said steamer "G——," shortly after leaving Lamlash on her run up to Glasgow, became disabled outside of the Garrochhead. When first noticed in distress she was abreast of the Garrochhead, and had a pendant flying half-mast, which was taken for a signal of distress and for assistance. She was then stopped and blowing off steam, and as the wind was south-westerly and blowing right in on the Garrochhead shore, she was drifting on to the shore very fast. She had no sail up, and was unable to act under steam power.

3. The pursuer, Captain M'——, seeing the said steamer "G——" thus in distress and in danger, bore down for the said steamer "G——." There was a strong breeze and a heavy sea on at the time, and Captain M'—— had to exercise very great caution in order to prevent immediate danger to his own steamer and her passengers and crew. When the "H——" got close to the "G——," the master of the "G——" hailed that he wanted assistance, but that the pursuers' said steamer was not to come alongside of the said steamer "G——," for the sea was too high and might cause serious damage to both steamers if they came in contact.

4. Many of the passengers on board of the said steamer "G——" were in a state of alarm. The captain of the said steamer "G——" also cried out that the engine or some other part of her machinery had broken down, and asked if the pursuers could give him a tow. To this request—seeing the great danger to which the "G——" and her passengers and crew were exposed—the pursuers agreed,

but before getting the said steamers under weigh the pursuer dreaded great danger of both being drifted on to the rocks, the sea being so very heavy, and both steamers within a short distance of the said rocks at Garrochhead shore.

5. At the request of the master of the said steamer "G—," the "H—" towed the former into Kilchattan Bay, and into smooth water, and when thus out of danger the pursuers' said steamer then took on board all the passengers of the "G—," numbering from 100 to 150, and conveyed them to the several places to which they desired to be taken.

6. The "H—," in consequence of being thus detained rendering assistance to and saving the said steamer "G—," and the lives of the several passengers and crew on board, lost the benefit of the run up to Glasgow and other intermediate places, and thereby sustained loss.

7. The pursuers aver that, if they had not rendered the foresaid assistance to the "G—" at the time they did—as there was no other steamer or vessel within sight or which could have rendered any effectual assistance to preserve the "G—" and her crew and passengers foresaid—the "G—" would have drifted on the said rocks on Garrochhead shore and been wrecked, whereby the lives of her crew and passengers on board would have been in great danger.

8. The defenders, C— D— and E— F—, are the owners of the "G—." The said steamer "G—" and her machinery, fittings, and other appurtenances, are of the value of £3000.

9. For the said salvage services the pursuers claim to be paid by the owners of the "G—," and are justly entitled to the sum of £200, which is a fair and reasonable sum for the said salvage services, but the defenders refuse to pay the said sum.

10. The pursuers and defenders have been unable to agree upon the remuneration to be paid by the latter to the pursuers for the said salvage services, and thus a dispute within the meaning of the 460th section of the Merchant Shipping Act, 1854, has arisen.

11. This petition is founded on the 458th, 459th, 460th, 461st, 462d, 463d, and 501st sections of the Merchant Shipping Act, 1854.

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#### **NOTE OF PLEA IN LAW.**

The pursuers having rendered theforesaid salvage services, and the sum claimed being fair and reasonable, are entitled to an award for payment thereof, and for the costs of the proceedings:

#### ***IN RESPECT WHEREOF.***

6. On the petition being presented, the Sheriff Clerk will order service of it upon the defenders in accordance with the 533d section of the Merchant Shipping Act, 1854.

#### **No. 31. Form of warrant for service.**

*Greenock, —— 187—.—The Sheriff Clerk Depute of —— shire, grants warrant to cite the Defenders to appear personally before the Sheriff [or Sheriff-Substitute] of Renfrew and Bute, within the Sheriff Court House, Nelson Street (west), Greenock, upon —— the —— day of —— 187—, at —— o'clock noon, and a copy of the foregoing Petition, and this Warrant, to be delivered to the Defender by an Officer of Court along with this citation: Further, grants warrant for citing witnesses and havers to appear at the same time and place to give evidence and produce such writs as may be specified in this citation: Further, grants warrant to arrest on the dependence, in common form, as craved.*

7. The petition may be served in the usual way, either personally or at the dwelling place of the defender, or left on board of the ship to which the defender may belong (Merchant Shipping Act, 1854, sec. 522). The word "belong" as used in that Act is to be taken in its popular sense. *The Fusilier*, L. J., vol. 34, Adm. 25.

8. At the diet appointed for the hearing of the case, the petition will be laid before the Sheriff, and the time—forty-eight hours—within which he is to issue his award will be reckoned from the hour of compearance, the laying of the petition before the Sheriff at such diet, being the Act of *referring* the dispute to him mentioned in the 461st section. If the Sheriff finds that he cannot issue his award within the very limited time specified in the Act, he may, by a writing under his hand, extend the time for so doing (sec. 461).

9. By section 536 of the Merchant Shipping Act, 1854, the Sheriff is not bound to make a record of the evidence, and by the 461st section he may call to his assistance some person conversant with maritime affairs as Assessor.

10. If either of the parties is aggrieved by the Sheriff's award, and if the sum in dispute exceeds £50, he must, within ten days, give notice to the

Sheriff of his intention to appeal, and must, within twenty days, appeal to the Court of Session in the manner in which other judgments of the Sheriff are appealed to that court (section 464).

11. When the award is final and the amount found due is not paid, the salvors, if they have arrested the vessel on the dependence, may raise an action of sale in common form, but the speediest mode of recovering the amount awarded is for the salvors to apply to the Receiver, in manner hereinafter pointed out, to detain the saved property should that not have been done at the outset; and having got the property detained, the Receiver may be called upon to sell as much thereof as will satisfy the award (sec. 469).

12. When property is saved by any person, the 468th section of the 1854 Act authorises the Receiver of Wrecks to detain the ship or boat, *and* the cargo and apparel belonging thereto until payment is made or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel. The Act does not specify how the Receiver is to be notified of the claim for the alleged services, but the Board of Trade, who have power (sec. 8) to issue forms for the purposes of the Act, have directed that when salvors desire that the saved property should be detained they must make a declaration in the form about to be given (No. 33), in regard to which

the Board of Trade have issued these directions,  
viz.:—

“ 1. This form can be obtained, free of charge, of any Receiver  
“ of Wreck, or of any Customs or Coastguard Officer.

“ 2. It is to be filled in legibly by the salvors, or, if there are  
“ several salvors, it will be better for them to appoint the master  
“ or owner of their vessel as an agent on their behalf, as when  
“ such an agent is appointed he only need sign the form. It must  
“ then be declared before a magistrate.

“ 3. When the magistrate has signed the form it will be returned  
“ to the salvors, who will deliver it to the Receiver of Wrecks.

“ 4. The Receiver of Wrecks will take the necessary steps for  
“ detaining the property until the claims are settled, or proper  
“ security is given.”

### No. 32. Form of mandate to agent for salvors.

Greenock, —— 187—.

G—— B——, Esq., Greenock.

Sir,—We, the owners, master, and crew of the screw steamer  
——, of Glasgow, hereby appoint you our agent in the matter  
of the salvage services rendered by the said steamer, and her  
master and crew, to the ship or vessel “ T——,” of Portland, U.S.  
of America, upon the ——; and authorise you to make the  
requisite declaration of claim to remuneration for said salvage  
services, and application to the Receiver of Wrecks at Greenock  
to detain property for payment thereof.—We are,

(To be signed by owners, master, and crew.)

## No. 33. Form of declaration and application.

**DECLARATION OF CLAIM TO REMUNERATION FOR SALVAGE SERVICES  
AND APPLICATION TO THE RECEIVER OF WRECKS TO DETAIN  
PROPERTY FOR PAYMENT THEREOF.**

Name of Ship which or from which Property was Saved.	Official Number, if British.	Port of Registry or Country, if Foreign.	Value of Property saved, as far as can be ascertained.

We, whose names are hereto subscribed, do severally and conjunctly, solemnly and sincerely declare: That we have rendered services to the ship "T—," of Portland, U.S. of America, when in distress, on the \_\_\_\_\_ day of \_\_\_\_\_, and that we are entitled to salvage for such services. We therefore apply to the Receiver of Wrecks at the port of Greenock to detain such vessel, under the provisions of the Merchant Shipping Act, 1854. [or, if the declaration is made by agent, say: I, whose name is hereto subscribed, agent for the owners, master, and crew of the screw steamer —— of Glasgow, conform to mandate dated ——, herewith produced, do solemnly and sincerely declare that the said owners, master, and crew of the said steamer, rendered services to the ship "T—," of Portland, U.S. of America, when in distress, on the \_\_\_\_\_ day of \_\_\_\_\_, and that they are entitled to salvage for such services. I therefore apply to the Receiver of Wrecks at the port of Greenock to detain such vessel, under the provisions of the Merchant Shipping Act, 1854], and we [or I] make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of His Majesty King William the Fourth, intituled "An Act to Repeal an Act " of the present Session of Parliament, intituled 'An Act for the

“ ‘ more effectual Abolition of Oaths and Affirmations taken and  
 “ ‘ made in various Departments of the State, and to substitute  
 “ ‘ Declarations in lieu thereof, and for the more entire Suppression  
 “ ‘ of Voluntary and extra-judicial Oaths and Affidavits, and to  
 “ ‘ make other Provisions for the Abolition of unnecessary Oaths.’ ”

(To be signed by salvors or their agent).

Declared before me at Greenock this \_\_\_\_\_ day of \_\_\_\_\_  
 187—. \_\_\_\_\_, J.P.

13. Upon getting the declaration and application, the Receiver will detain the property saved, by placing a person in charge of it until the claim is settled, or warrant has been issued by a competent court for the detention of the property; but the owners, before such warrant is issued, may apply to the Receiver to release the saved property on security being given to his satisfaction for the salvage claimed. (Act of 1854, Section 468).

14. When the application for the release of the saved property is made, the Receiver should require the salvors or their agent to state the amount of their claim, and should also inquire into the nature of the services rendered, in order to enable him to judge as to the amount for which security is to be taken. (Instructions by Board of Trade to Receivers, par. 99).

15. Upon the amount for which bond is to be granted being fixed, and the Receiver being satisfied of the sufficiency of the sureties—two being the

number recommended by the Board of Trade (Instructions, par. 100)—a bond will be given in the following form, being that required by the Board of Trade:—

No. 34. Form of bond to secure salvage.

We, A— B— (*here state name and designation of owner, part owner or master*), C— D— and E— F— (*here state names and designations of the two sureties*), do hereby, and each of us doth jointly and severally bind ourselves and our respective heirs, executors, and administrators unto G— H— (*here state name and designation of person to whom the bond is granted*. This should be some person named by or on behalf of the salvors, or if they cannot agree upon some person, it may be the Receiver,— Instructions, p. 208), his executors, administrators and assigns, in the penal sum of —— pounds.

Now, the condition of the above written bond is such that if all such sums of money as may be found legally due on account of salvage and expenses and costs, in respect of services alleged to have been rendered (*here insert the nature of the services, stating the name and description of the ship or article saved, the place and date of the occurrence, with any particulars which may be necessary to identify the services rendered*) shall be duly paid and satisfied, then the above bond is to become void, otherwise to remain in full force: IN WITNESS WHEREOF, we, the above bounden, A— B—, C— D— and E— F—, have hereunto subscribed our names and affixed our seals, this —— day of ——.

(L. S.)	A— B—.
(L. S.)	C— D—.
(L. S.)	E— F—.

Executed by the above-named in the presence of

J— K—	( <i>add name and designation</i> ).
L— M—	( <i>add name and designation</i> ).

16. On this bond being duly executed and delivered to the Receiver, he will append to it a certificate in these words:—

I certify that the above-written bond has been given in pursuance of the 468th section of the Merchant Shipping Act, 1854.

N—— O——,  
Receiver for the district of ——

The —— day of —— 18—.

17. In cases where the claim for salvage does not exceed £200, the decision of the Receiver as to the amount of the security and the sufficiency of the sureties is fixed; but in cases above £200 either party may apply to the Court of Session (Act of 1854, sec. 468), which means and includes either Division of that court or the Lord Ordinary officiating on the Bills during vacation (Amendment Act of 1862, sec. 51), to determine the amount of the security to be given, and the sufficiency of the sureties. An example of proceedings in the Court of Session for the purpose mentioned will be found in the case of *Otis v. Kidston, &c.*, 31 Jany., 1862, 24 D. 419.

18. It frequently happens that there is a great difference in the views of the salvors and the owners of the property saved as to its value, and in order to obtain an authoritative opinion, it has been provided by the 50th section of the Merchant Shipping Amendment Act, 1862, that whenever any salvage question

arises, the Receiver may, upon application from either of the parties, appoint a valuer where the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy thereof to both parties; and it is provided that any copy of such valuation purporting to be signed by the valuers, and to be attested by the Receiver, shall be received in evidence in any subsequent proceedings.

19. The forms in connection with the valuation are as follows:—

No. 35. Form of application.

PORT OF \_\_\_\_\_.

APPLICATION TO THE RECEIVER AT THE ABOVE-NAMED PORT TO  
APPOINT A VALUER UNDER THE 50TH SECTION OF THE MERCHANT  
SHIPPING ACT AMENDMENT ACT, 1862.

SHIP.

Name & Official Number of Ship.	Port of Registry.	Rig.	Registered Tonnage.	Cargo.

APPLICANT.

Surname of Applicant.	Christian Name of Applicant.	Address.	Whether Owner, Agent, Master, or Salvor.

I hereby make application to you as Receiver of Wreck for this port and district to appoint a valuer, in pursuance of the 50th section of the Merchant Shipping Act Amendment Act, 1862, to value the (*insert the word "ship" or "cargo," or the words "ship and cargo," as the case may be*) named above, and now lying in \_\_\_\_\_.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

\_\_\_\_\_ (Signature of Applicant.)

\_\_\_\_\_ Witness.

To \_\_\_\_\_

Receiver of Wrecks for the port and district of \_\_\_\_\_.

#### No. 36. Form of appointment.

PORT OF \_\_\_\_\_.

**APOINTMENT (BY THE RECEIVER OF WRECKS AT THE ABOVE-NAMED PORT) OF A VALUER UNDER THE 50TH SECTION OF THE MERCHANT SHIPPING ACT AMENDMENT ACT, 1862.**

#### PROPERTY TO BE VALUED.

Name & Official Number of Ship.	Port of Registry.	Rig.	Registered Tonnage.	Cargo.

#### VALUER APPOINTED.

Surname.	Christian Name.	Address.

I, the undersigned ——, Receiver of Wrecks for this port and district, do hereby, in pursuance of the provisions of the Merchant Shipping Act Amendment Act, 1862, appoint you, the above-named licensed valuer, to value the (*insert the word "ship" or "cargo," or the words "ship and cargo," as the case may be*) named above, and now lying in ——.

Dated at —— this —— day of —— 18—.

——, Receiver of Wrecks.

#### No. 37. Form of valuation.

PORT OF ——.

#### VALUATION MADE IN PURSUANCE OF THE 50TH SECTION OF THE MERCHANT SHIPPING ACT AMENDMENT ACT, 1862.

SHIP.

Name & Official Number of Ship.	Port of Registry.	Rig.	Registered Tonnage.	Cargo.

I, the undersigned ——, Licensed Valuer, having been duly appointed by the Receiver of Wrecks for this port and district to value the (*insert the word "ship" or "cargo," or the words "ship and cargo," as the case may be*) named above, do hereby certify that I value the said vessel as she now lies in —— at the sum of (*value of ship in words at length*), and her cargo of —— at the sum of (*value of cargo in words at length*).

Dated at —— this —— day of —— 18—.

——, Licensed Valuer.

To ——

Receiver of Wrecks for the port and district of ——.

20. In the case of *Duncan v. The Dundee &c. Shipping Company*, 8th March, 1878 (Scottish Law Reporter, Vol. XV. p. 429), two questions were raised by the defenders—the one being whether the owners of a vessel could be proceeded against personally for the salvage of ship and cargo, and the other, whether the owners of the ship could be made liable for the salvage of her cargo. The vessel, which was a steamer plying regularly between London and Dundee, and laden with a general cargo belonging to a large number of shippers, had through the fault of the master got on the rocks, and was towed off by a steamer belonging to the pursuer. An action having been brought against the owners of the saved vessel for the whole salvage remuneration claimed, they pleaded (1) that the form of action was unprecedented, if not incompetent, as salvage questions should be tried by an action *in rem* and not by a personal action of this kind; and (2) that they, the owners of the ship, were not responsible for the salvage due by the cargo, of which they were not the owners, but were only responsible for the salvage due by themselves as the owners of the ship. It was however held by the Court (1) that the owners could be proceeded against in an action directed against them personally for salvage of ship and cargo, and (2) that they were liable for salvage both on the ship and on the cargo though they were not the owners

of the cargo ; for, being common carriers, they were responsible for the safe delivery of the latter, and therefore the aid given by the other ship was really rendered to them in respect of the cargo as well as of the ship. In pronouncing judgment, the Lord President, with reference to the second of the two pleas mentioned, gave as his reasons for repelling it, first, That as the cargo of the steamer to which the services were rendered belonged to some hundreds of owners, there would have been difficulty and inconvenience if all of them had to be called to the action ; and, second, That as the stranding had been caused by the fault of the master, and as the owners were responsible for the safe delivery of the cargo, the services to the ship by which the safety of the cargo was secured were really for the benefit of the ship. He said that, "at first sight that"—(the objection that the owners of the ship were not responsible for the salvage of the cargo)—"appears very plausible and "formidable, and, were we dealing with a case of "salving a vessel trading with a foreign port, and "carrying cargo under a charter-party or bills of "lading, I think great weight would be attached to "the objection."

21. While no decision was given by the Court on that point, the doubt which the Lord President thus expressed recently caused the owners of a steamer—

which owners alleged that their vessel had towed off the rocks a ship laden with a cargo of sugar from a foreign port—to raise separate actions against the owners of the ship and the owners of the cargo. But, with the greatest respect and deference to the learned judge referred to, however, there seems to be no incompetency, but, on the contrary, the greatest propriety in suing the owner of the ship for the whole salvage, *where there have been no services rendered in saving the cargo apart from the ship in which it is contained.* In Scotland, where there is now no separate Admiralty Court, proceedings for the recovery of salvage are infrequent, but in the English and Irish Admiralty Courts they are of almost daily occurrence, and in such courts the proceedings are invariably taken against the ship and cargo as jointly and severally liable for the remuneration due, leaving it to the owners of each subject to adjust their rights and liabilities *inter se.*

22. The mode in which sums paid for salvage services are dealt with by the owners of the ship and the consignees of the cargo is, to allow the shipmaster or shipowner to deal with the claim as a whole, and when it has been settled to claim against the owners of the cargo for their proportion of the remuneration paid, as a general average charge. This mode of dealing with the claim is preferable to that

of the owners of the ship and the owners of the cargo acting separately. The shipmaster or shipowner has the responsibility for the safe custody and conveyance of the cargo, and the character of agent respecting it is, under certain circumstances, thrown upon him by the policy of the law.—(The “*Gratitudine*,” 3 Robinson’s Ad. Reports, pp. 257-60.) Where a ship with a cargo gets ashore, it is the duty of the master to take the most prompt measures for getting the vessel off, and carried to her destination, so that she may deliver her cargo ; and in the event of her taking the assistance of steam tugs, for example, the sum which the master of the ship may have to pay for such assistance is chargeable upon ship, freight, and cargo, according to their respective values. As all benefit by *one* service, it is right that those who own the ship and freight and those who own the goods should be jointly and severally liable for the whole salvage, with right of relief to the party who may pay the whole against the others for their proportion. If the cargo is still on board of the vessel when the salvage service is rendered, the shipowner is not put to much more inconvenience by being sued for the whole than he would be if sued for the ship’s part, and it is he or his servant, the master, who alone knows the circumstances under which the services for which the salvage is claimed were rendered.

23. This joint and several liability of the ship and cargo for salvage, and the competency and propriety of suing the shipowner for the whole claim, receives considerable support from the decision of the Privy Council in England in the case of the "Fusilier," where the meaning and construction of the clauses of the Merchant Shipping Act, 1854, bearing on the right to compensation for salvage services, were elaborately reviewed. The case arose in the English Admiralty Court regarding a claim for life salvage, and the question was raised whether the cargo was liable under the statute for a proportion of the compensation therefor. The decision of Dr. Lushington was to the effect that "Life salvage is to be recovered "in the same manner and from the same source as "other salvage services were before the statute." —(The "Fusilier," 34 Law Journal Adm., p. 25.) The decision was appealed against to the Privy Council, whose judgment (delivered by Lord Chelmsford) was as follows :—

#### THE "FUSILIER."—LIFE SALVAGE.

Lord Chelmsford, in giving the judgment of their lordships in this case, said—"The principal question raised upon this appeal, "is whether by the 458th and 459th sections of 'The Merchant "Shipping Act, 1854,' the owners of the *cargo* of a vessel to which "Salvage services have been rendered, are liable to contribute to "that portion of the claim of the Salvors which arises from the "saving the lives of the passengers on board the vessel."

\* \* \* \* \*

"The principal question in the case is one of great importance, "and of some difficulty. Prior to the passing of the Merchant "Shipping Act, 1854, the Court of Admiralty, in a cause of "Salvage where no property had been rescued from peril, but "where life had been saved, had no power to award anything to "the Salvors. But where both property and life had been saved, "it was the well-established practice of the Court to increase the "amount of Salvage, and thus indirectly remunerate the Salvors "for the merit due to their having saved life as well as property. "Of course, as the Salvage was awarded in one entire sum, the "Owners of the cargo, as well as of the ship and freight, contributed "their proportion to the payment of this increased Salvage, and "so, in a certain sense, were rendered liable to the payment of "what is called Life Salvage. Before the passing of the Merchant "Shipping Act, 1854, the legislature had provided for the payment "of a reward or compensation by way of Salvage for the saving of "the life of any person on board a ship or vessel in distress, by "the 19th and 21st sections of 9 & 10 Vict. cap. 99, 'An Act "for consolidating and amending the Laws relating to Wreck and "Salvage.' The provisions of these sections are, however, sub- "stantially re-enacted in the Merchant Shipping Act, 1854, and, "therefore, need not be further noticed. In construing the 458th "and 459th sections of the Act on which the principal question "arises, the recognised practice of the Court of Admiralty of "indirectly rewarding Salvors for the saving of human life by "giving an increased rate of Salvage on that account must always "be borne in mind. The legislature, in dealing with the subject "of Life Salvage, must be taken to have been aware of this "practice, and to have intended to confer upon the Court of "Admiralty a power of doing that directly which they have been "so long in the habit of doing indirectly. And it must also be "remembered that by the established practice of the Court, the

" Owners of cargo were always rendered virtually contributory to  
 " the reward and compensation given to Salvors for the preservation  
 " of life. Under these circumstances, the provisions in the sections  
 " in question were introduced. The 458th section is in these  
 " terms:—

" Whenever any ship or boat is stranded, or otherwise in  
 " distress, on the shore of any sea or tidal water situate within  
 " the limits of the United Kingdom, and services are rendered by  
 " any person—

" 1. In assisting such ship or boat ;

" 2. In saving the lives of the persons belonging to such ship  
 " or boat ;

" 3. In saving the cargo or apparel of such ship or boat, or any  
 " portion thereof;

" And whenever any wreck is saved by any person other than  
 " a receiver within the United Kingdom :

" There shall be payable by the Owners of such ship or boat, cargo,  
 " apparel, or wreck, to the person by whom such services, or any  
 " of them, are rendered, or by whom such wreck is saved, a  
 " reasonable amount of Salvage, together with all expenses  
 " properly incurred by him in the performance of such services  
 " or the saving of such wreck, the amount of such Salvage and  
 " expenses (which expenses are herein-after included under the  
 " term Salvage) to be determined in case of dispute in manner  
 " herein-after mentioned."

" It is perhaps hardly necessary to advert to a point which was  
 " raised in the Court of Admiralty, but barely mentioned here,  
 " and certainly not insisted upon, that the persons saved, being  
 " passengers on board the 'Fusilier,' were not in the terms of the  
 " Act 'persons belonging to such ship.' It would be strange  
 " indeed if an Act intended to encourage and reward the saving  
 " of life which is in peril in consequence of the distress and danger  
 " of the vessel in which it is embarked, should be construed so as

" to make a distinction between those who were on board in  
" different capacities and different relations to the vessel. It is a  
" sufficient answer to such an objection to say that nothing is more  
" common in popular language than to speak of the passengers  
" belonging to such a vessel. The Salvors, therefore, are entitled  
" to a reasonable amount of Salvage for the services rendered in  
" saving the lives of the passengers on board the 'Fusilier;' and  
" the only question to be considered is, whether the Owners of  
" cargo are liable to contribute towards its payment. The general  
" rule as to the parties liable to pay Salvage is, that the property  
" actually benefited is alone chargeable with the Salvage recovered.  
" But this rule is inapplicable in the case of Life Salvage, because  
" it is difficult to imagine a case where the saving of the lives,  
" either of the crew or of the passengers of a vessel in distress,  
" would be of any benefit either to the vessel or to the cargo.  
" The legislature therefore could not have intended that the benefit  
" to property should be the criterion of the liability to the payment  
" of Life Salvage. All that seems to have been contemplated is,  
" that there should be included in the entire sum payable for  
" Salvage of ship and cargo, a distinct reward for the preservation  
" of human life. It was argued in behalf of the appellants that  
" when the 458th sec., after describing the services to be rendered  
" in assisting the ship or boat, in saving the lives of the persons  
" belonging to the ship or boat, and in saving the cargo or apparel  
" of the ship or boat, goes on to say, there shall be payable by the  
" Owners of such ship or boat, cargo, apparel, or wreck, a reason-  
" able amount of Salvage, the words must be read *reddendo singula*  
" *singulis.*\* But although this might very well be if the section  
" had confined the claim to Salvage to the saving of the ship and  
" cargo and apparel—for then each species of property benefited

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\* NOTE—By giving to each that which really belongs to it. Wharton's Law Lexicon, p. 631.

" would alone have been chargeable—yet, where amongst the other  
" subjects of claim the saving of human life is included, there is no  
" reason why that should be referred to the ship any more than to  
" the cargo, since the one derives no more benefit than the other  
" from the services rendered. The legislature seems merely to  
" have had in view the rewarding at a higher rate persons whose  
" services were more meritorious from having rescued human life  
" as well as property from peril, and almost to have assumed that  
" the liability to the Salvage would attach, without any distinction,  
" upon all the Owners of property exposed to the common danger.  
" And as the Salvage is always awarded in a gross sum, and under  
" this section is to be increased by the reward for the saving of  
" life, the Owners of cargo since the Act are liable exactly to the  
" same extent as before, with this immaterial difference, that there  
" now is a distinct and express item of claim to swell the amount  
" of Salvage to which they are contributory, instead of the whole  
" being estimated upon a higher scale. But it is said that the  
" 459th section of the Act shows that it must have been intended  
" by the legislature that the Owners of the ship should alone be  
" liable to the payment of Life Salvage, for it enacts that 'Salvage  
" in respect to the preservation of the life or lives of any person  
" belonging to any such ship or boat shall be payable by the  
" Owners of the ship or boat in priority to all other claims for  
" Salvage, and in cases where such ship or boat is destroyed, or  
" where the value thereof is insufficient, after payment of the  
" actual expenses incurred, to pay the amount of Salvage due in  
" respect of any life or lives, the Board of Trade may, in its  
" discretion, award to the Salvors of such life or lives out of the  
" Mercantile Marine Fund such sum or sums as it deems fit, in  
" whole or part satisfaction of any amount of Salvage so left  
" unpaid in respect of such life or lives.' There is no doubt that  
" this section creates some difficulty as to whether the legislature  
" intended that Life Salvage should be payable by any other persons

" than the Owners of the ship; but if such was the intention, it  
" would have been easy to have expressed it, and the language of  
" the section is capable of the construction that it merely fixes the  
" limit of the Shipowner's liability, and does not mean to render  
" him solely liable to the payment of this description of Salvage.  
" And whatever doubt may be thrown upon the subject by this  
" section, there are two subsequent sections of the Act, the 468th  
" and the 469th, which appear to be susceptible of no other  
" interpretation than that the Owners of cargo were intended to  
" bear a proportion of the payment for Life Salvage. The 468th  
" section enacts—"that whenever any Salvage is due to any person  
" under this Act, the Receiver shall act as follows,—that is to  
" say, if the same is due in respect of services rendered in assisting  
" any ship or boat, or in saving the lives of persons belonging to  
" the same, or the cargo or apparel thereof, he shall detain such  
" ship or boat, and the cargo and apparel belonging thereto, until  
" payment is made, or process has been issued by some competent  
" court for the detention of such ship, boat, cargo, or apparel."  
" It is thus expressly provided, that in the case of Salvage being  
" due for services rendered in saving the lives of persons belonging  
" to the ship, the cargo shall be detained. And it is not intended  
" that it shall be merely held as additional security with the ship  
" for payment of the Salvage, for the 469th section enacts, that  
" whenever any ship, boat, cargo, apparel, or wreck so detained  
" by any Receiver for non-payment of any sums so due as afore-  
" said (that is, amongst others, for services rendered 'in saving  
" the lives of persons belonging to the ship'), the Receiver in  
" certain cases may sell such ship, boat, cargo, apparel, or wreck,  
" and out of the proceeds of the sale, defray all sums of money  
" due in respect of Salvage.' Whatever difficulty, therefore, may  
" be supposed to be created by the 459th section, it seems impossible  
" to read the two last-mentioned sections without being satisfied  
" that they proceed upon the ground of the Owners of cargo being

" liable to the payment of Life Salvage. The object of the legislature in the different sections referred to seems to have been " to give a legislative sanction to the practice of the Court of Admiralty of indirectly rewarding Salvors for the preservation " of human life, by allowing the value of their services to be made " the subject of a distinct estimate, but without intending to fix " the responsibility of payment upon one class of owners of " property involved in the common peril, more than on another. " Their lordships, after much consideration, have arrived at the " same conclusion with the learned judge of the Court of Admiralty, " and they will, therefore, humbly recommend to Her Majesty " that the decree appealed from be affirmed, and that the appeal " be dismissed with costs."

23. In the case of the "Schiller" L. R. Probate Division, Vol. II., p.p. 153-4, Lord Justice Baggallay, with reference to the contention that the 458th section of the Merchant Shipping Act, 1854, creating or declaring liability for salvage remuneration, was to be read *reddendo singula singulis*, said—

" Now, omitting the references to the saving of 'wreck,' which " do not appear to me to have any bearing upon the questions " now under consideration, the 458th section enacts that whenever " a ship is stranded or otherwise in distress, and 'services are " rendered by any person (1) in assisting such ship or boat ; (2) " in saving the lives of the persons belonging to such ship or " boat ; (3) in saving the cargo or apparel of such ship or " boat or any portion thereof,' 'there shall be payable by the " owners of such ship or boat, cargo, apparel, or wreck, to the " person by whom such services, or any of them, are rendered, or " by whom such wreck is saved, a reasonable amount of salvage.' " Now, these words are very wide ; if any one of the three classes

" of service is rendered—for instance, if the saving of life is the " only service—the owners of the several classes of property, ship, " cargo, and apparel, are all made liable to pay a reasonable " amount of salvage to the person rendering the service. This is " the grammatical meaning of the words used in section 458. I am " unable to follow the argument that has been addressed to me, " that the words creating or declaring the liability are to be read " *reddendo singula singulis*. If the service of saving life had been " omitted, there might have been some weight in the argument " that the owners of ship, cargo, and apparel, were to be liable " to the salvors of the property of which they were respectively the owners; but upon whom, if this principle is to be adopted, is the liability to be imposed in cases of the salvage " being confined to life? It is clear from the terms of the section " that the burden is to fall somewhere, and why, so far as the " provisions of this section are concerned, should it be imposed " upon the owners of the ship any more than upon the owners of " the cargo."

#### XV. PROCEEDINGS FOR THE SALE OF A VESSEL WHEN THE OWNERS DISAGREE.

1. When the owners of a vessel disagree as to her management, it is competent for any one or more of them to offer to buy the shares of their co-owners or to sell their own shares at a specified price; and should those to whom the offer is made be unwilling either to buy or sell, the owner or owners who have made the offer can insist on the vessel being publicly sold.—Boyd's Proceedings, p. 33; Smith's Maritime Practice, p. 48; Darling's Practice, Vol. I., p. 262; Shand's Practice, Vol. I., p. 417.

2. The process is called one of " Set and Sale," and the following will be the form of the Petition:—

No. 38. Form of Petition of Set and Sale.

**PETITION.**

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In the Sheriff Court of Renfrew and Bute,  
at Greenock,

A—— B——, shipowner in Greenock, owner of  $\frac{3}{4}$ th shares of the ship or vessel "Scipio," of Greenock, Pursuer;

**AGAINST**

C—— D——, shipowner in Greenock, owner of  $\frac{1}{4}$ th shares, and E—— F——, shipowner in Greenock, owner of  $\frac{1}{4}$ th shares of the said ship or vessel "Scipio," Defenders:

The above-named pursuer submits to the Court the Condescendence and Note of Plea in Law hereto annexed, and prays the Court

To grant a decree decerning and ordaining that, as the pursuer is willing to sell, set, and dispose of his  $\frac{3}{4}$ th shares of the said ship or vessel "Scipio," of Greenock, and her boats, furniture, and apparelling whatsoever, to the defenders, for the sum of £2000 sterling, the defenders ought to accept thereof, or otherwise decerning and ordaining that the defenders ought, each of them, to sell, set, and give over to the pursuer their respective  $\frac{1}{4}$ th shares of the said ship or vessel, her boats, furniture, and apparelling whatsoever, at the price of £1000 for

or failed to accept of his offer, the pursuer is entitled to have the vessel sold as prayed for:

*IN RESPECT WHEREOF.*

3. At the first calling of the cause, if either of the parties is willing to take the shares of the others at the price specified, a decree is pronounced decerning, adjudging, and declaring as follows:—

No. 39. Form of decree.

(Date).—The Sheriff-Substitute having considered the petition, and having heard parties' procurators, Finds it instructed that the defenders, C—— D—— and E—— F——, have accepted [and paid for] the pursuer's thirty-two sixty-fourth shares of the said ship or vessel "Scipio," at the price of £——, being that set thereon by the pursuer: Therefore, adjudges, decerns, and declares the said thirty-two sixty-fourth shares of the said vessel "Scipio," with her boats, furniture, and apparel, belonging to the pursuer, to appertain and belong to the said C—— D—— and E—— F——, and [*if price not paid, say upon payment of the said price*] ordains possession to be given to them, and decerns.

4. If the defenders, on the other hand, agree to take the pursuer's shares, a decree will be pronounced suitable to that state of matters; but, if the defenders still refuse to buy or sell, then the vessel will be ordained to be sold, and the subsequent proceedings will be the same as those when a vessel is sold under the diligence of arrestment. (Supra p. 89.)

XVI. PROCEEDINGS FOR STOPPAGE OF GOODS  
*IN TRANSITU.*

1. The seller of goods, besides having the right of lien over them while they remain in his possession, has the valuable privilege, in the event of the insolvency or bankruptcy of the buyer, of re-possessing himself of them after he has parted with the possession, provided the goods are still in course of transit from the seller to the buyer. If the goods have once reached the custody of the buyer, or if they have been put on board of his ship, and the bills of lading for them have been granted by the master in favour of the buyer, the transit is at an end, and the goods cannot be stopped.
2. Even if the goods have been shipped to the buyer in the vessel of a middleman, if the buyer has endorsed the bills of lading to a *bona fide* holder for a valuable consideration, the right to stop is barred.
3. The right to stop may be exercised by mere notice to the holder of the goods, but the safe course is to apply to the Court for an interdict against delivery to the buyers.—Bell's Com., M'Laren's Ed. I. p. 249. The following may be adopted as the form in the case of goods on shipboard,

No. 40. Form of Petition for stoppage *in transitu.***PETITION.**

In the Sheriff Court of Renfrew and Bute,  
at Greenock,

A—— B—— & Co., merchants in London, Pur-  
suers, with concurrence of ——, their mandatories;

**AGAINST**

E—— F——, master of the screw steamer or  
vessel "Nero," of Bristol, presently lying in the  
harbour of Greenock, and as such master repre-  
senting the owner or owners of the said vessel, and  
E—— D—— & Co., merchants in Glasgow, De-  
fenders:

The above-named pursuers submit to the Court the Condescen-  
dence and Note of Plea in Law hereto annexed, and pray the  
Court

To interdict the said E—— F—— from delivering to  
the said C—— D—— & Co. 500 bags of sugar marked  
\_\_\_\_\_, now on board of the said steamer, and, in the  
meantime, to grant interdict as craved: Farther, to ordain  
the said E—— F—— to deliver back the said goods  
to the pursuers; and, farther, in the event of any party  
opposing this application, to find such party liable to  
the pursuers in expenses, and to decern therefor.

## CONDESCENDENCE.

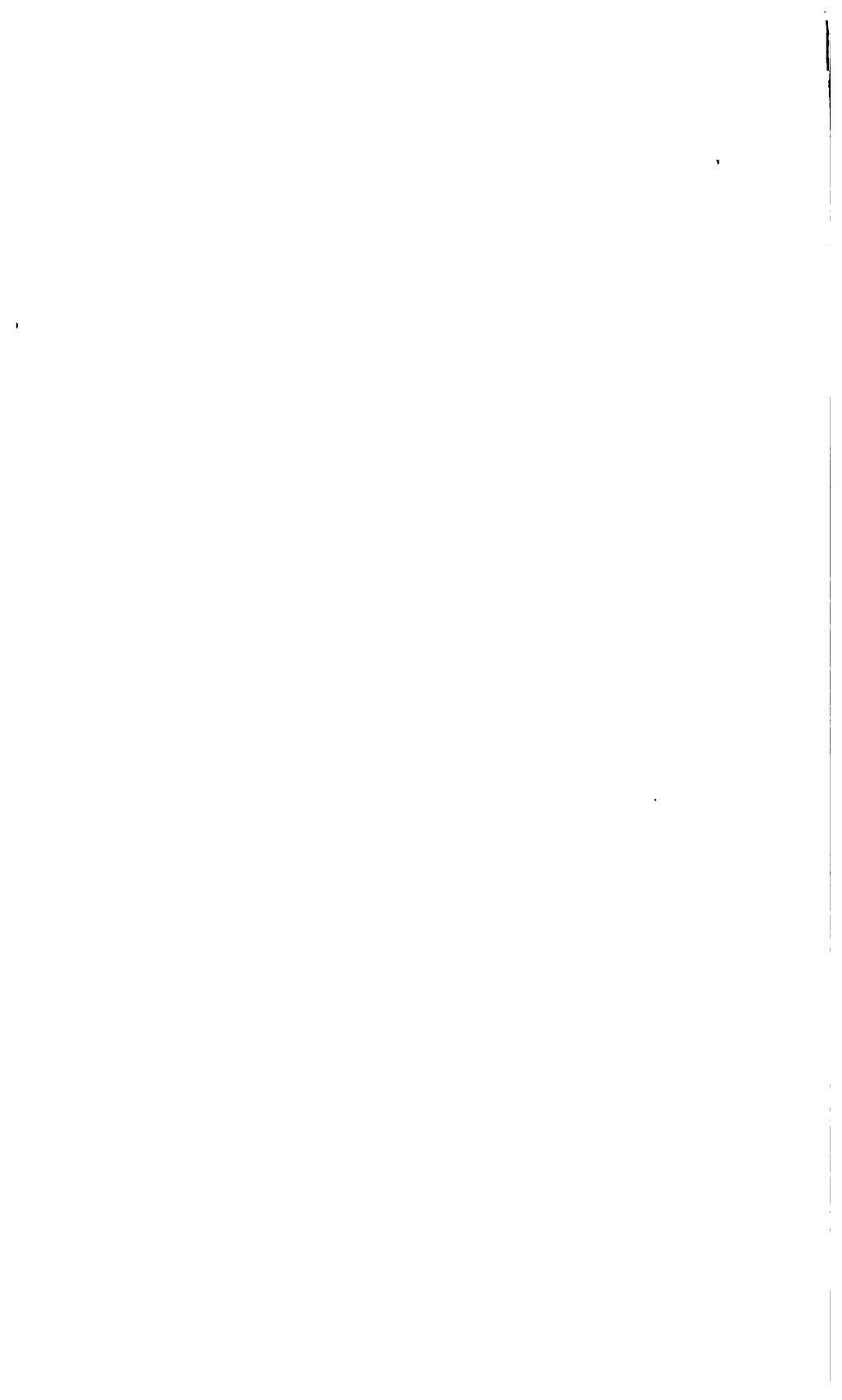
1. The pursuers are merchants in London, and the defenders, C— D— & Co., are merchants in Glasgow, and the defender E— F— is master of the screw steamer or vessel "Nero," of Bristol, presently lying in the harbour of Greenock.
  2. On or about the —— day of ——, 18—, the pursuers sold to the said C— D— & Co. 500 bags of sugar at the price of —— per cwt.
  3. In implement of the said sale [and in terms of instructions received by the pursuers from the said C— D— & Co.], the pursuers on or about the —— day of —— last, shipped on board of the said screw steamer or vessel "Nero," while at Dunkirk, the said 500 bags of sugar marked ——, for delivery to the said C— D— & Co. at Greenock, where the said steamer, with the said goods, arrived upon the —— day of —— last. The said goods are still on board of the said steamer, and in the custody of the said E— F—, and are still *in transitu*.
  4. The price of the said 500 bags is £——, conform to invoice dated the ——, which specifies the weight of the said goods. The invoice is herewith produced and herein referred to.
  5. Since the said goods were shipped on board of the said screw steamer or vessel "Nero," the said C— D— & Co. have become insolvent [or the said C— D— & Co.'s estates have been sequestrated], and they have not paid any part the price of the said goods. It is therefore necessary for the protection of the pursuers that delivery of the said goods should be stopped, and possession thereof regained by them.
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NOTE OF PLEA IN LAW.

The defenders C—— D—— & Co. having become insolvent [or bankrupt] without paying the price of the said goods, the pursuers are entitled to stop the same *in transitu*:

*IN RESPECT WHEREOF.*

## APPENDIX.



## APPENDIX.

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### I.

CARLBERG, &c., *v.* BORJESSON, &c.,  
AND  
Do.                  *v.*                  Do.

The decisions of the Court of Session in these two cases, which are referred to at pages 79 and 81, were appealed by the Respondents to the House of Lords, but the decisions were affirmed.

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### II.

SHERIFF COURTS (SCOTLAND) ACT.  
39 AND 40 VICTORIA, CHAPTER 70.

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#### ARRANGEMENT OF CLAUSES.

##### *Preliminary.*

###### *Clause.*

1. Short title.
2. Commencement and application of Act.
3. Interpretation of terms.

##### *I.—Sessions.*

4. Of the sessions.
5. Court days in vacation.

##### *II.—Petition and Service.*

6. Form of petitions and defences.
7. Petitions, &c., may be written or printed.
8. Inducia of petitions and periods of charge.
9. Sheriff's warrants, &c., may be executed edictally.
10. Original petitions to remain in the hands of the clerk; certified copies may be borrowed.
11. As to proving lost petitions.
12. Of the service of writs.
13. Amendment of petitions in undefended causes.

**APPENDIX.****III.—*Decrees in absence.***

- 14. Decrees in absence.
- 15. Certain decrees in absence to have effect as decrees in foro.

**IV.—*Entering Appearance: Records.***

- 16. Procedure where defendant enters appearance.
- 17. Revision of pleadings not to be allowed as matter of course.
- 18. Procedure after pleadings completed, and adjustment of pleadings.
- 19. Prorogations of consent abolished.
- 20. If partie fail to appear in defended action, sheriff to give judgment.
- 21. Penalty on agent failing to return process borrowed.
- 22. Production of documents.
- 23. Procedure after record closed.
- 24. Amendment of records in defended actions.

**V.—*Special Actions; Multiplepoindings; Processes of Cessio.***

- 25. Procedure in multiplepoindings.
- 26. Cessio bonorum.

**VI.—*Appeals.***

- 27. What appeals competent before final judgments.
- 28. Note of appeal against judgment of the sheriff-substitute.
- 29. Effect of appeal.
- 30. How reclaiming petitions, &c. shall be drawn.
- 31. Power to regulate possession, &c., pending appeal.
- 32. When judgment, &c. may be extracted if no appeal.
- 33. Final judgments may be appealed within one month, if not sooner extracted or implemented.
- 34. Correction of accidental errors in judgment.

**VII.—*The Commissary Courts abolished.***

- 35. Commissary courts abolished, and powers transferred to sheriffs.
- 36. Office of commissary-clerk in certain cases abolished.
- 37. Vacancies in office of commissary-clerk not to be supplied.
- 38. All commissary-clerks, except in Edinburgh, to be abolished on vacancies occurring.
- 39. Commissary-clerks continuing in office to perform the duties in the sheriff court.
- 40. Provisions to have effect on the abolition of the office of commissary-clerk.

**VIII.—*Amendment of Law as to confirmation of Executors.***

- 41. Note in confirmation by sheriff-clerk or commissary-clerk that deceased died domiciled in Scotland substituted for certified copy interlocutor by the sheriff commissary, and to have like effect.
- 42. Extension of the provisions of ss. 12 & 13 of 21 & 22 Vict. c. 56.
- 43. Confirmation of Scotch estate with note of trust funds in England or Ireland to be sealed in Probate Courts as if it contained English or Irish estate of the deceased.
- 44. Schedule C. of 21 & 22 Vict. c. 56 hereby repealed, and new form of intimation, &c.
- 45. A calendar of confirmation and inventories to be published annually.

IX.—*Miscellaneous Provisions.*

- 46. A person shall, in certain cases, be subject to the jurisdiction of the sheriff within whose territory he has a place of business, though domiciled in another county.
- 47. Actions of forthcoming and multiplepoinding to be competent before the sheriff to whose jurisdiction the arrestee or the holder of the fund is amenable.
- 48. Repeal of section 15 of Act 16 & 17 Vict. c. 80.
- 49. Actions falling asleep may be wakened of consent, and after certain procedure.
- 50. Sheriff may sign judgment when furth of his county.
- 51. Provision for the case of a sheriff being disabled or necessarily absent.
- 52. Mode of disposing of summary applications where no procedure provided by statute.
- 53. Additions to salaries of sheriffs of united counties to be paid out of Consolidated Fund.
- 54. Court to make acts of sederunt.

SCHEDULES.

An Act to alter and amend the Law relating to the Administration of Justice in Civil Causes in the ordinary Sheriff Courts in Scotland, and for other purposes relating thereto.—[15th August, 1876.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

**PRELIMINARY.**

1. This Act may be cited for all purposes as "The Sheriff Courts (Scotland) Act, 1876."
2. This Act shall commence and come into operation on the first day of October one thousand eight hundred and seventy-six, which date is hereinafter referred to as the commencement of this Act. Unless where otherwise expressly provided, this Act shall only apply to civil proceedings in the ordinary Sheriff Court.
3. In this Act, unless where there is something in the sense or context repugnant to that construction, the following terms have the meanings hereinafter assigned to them ; that is to say,  
"Action" includes every civil proceeding competent in the ordinary Sheriff Court :  
"Person" includes company, corporation, and firm :  
"Sheriff" includes sheriff-substitute :

"Sheriff-clerk" includes sheriff-clerk-depute, and in Part VIII. of this Act means commissary-clerk, in those cases in which such office is not abolished :

"Agent" means a law agent enrolled in terms of the Act of the thirty-sixth and thirty-seventh years of the reign of Her present Majesty, chapter sixty-three :

"Final judgment" means a judgment or interlocutor which, either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced on all the questions of law or fact raised therein, and although expenses, if found due, have not been taxed, modified, or decerned for.

4. I.—**Sessions.**—Each sheriff shall hold two sessions in each year, the one of which shall be called the winter session, and the other the summer session.

The winter session shall in each year commence on the first day of October or the first ordinary court day thereafter, and shall end on the last ordinary court day in March; but it shall be lawful for the Sheriff to adjourn the court at Christmas time for a period not exceeding fifteen days.

The summer session shall commence on the first day of May or the first ordinary court day thereafter, and shall end on the last ordinary court day in July.

5. The sheriff shall before the termination of each winter session appoint at least one court day during the spring vacation for the despatch of civil business; and shall before the termination of each summer session appoint at least two court days during the autumn vacation for the same purpose.

6. II.—**Petition and Service.**—Every action in the ordinary sheriff court shall be commenced by a petition in one of the forms, as nearly as may be, contained in Schedule (A.) annexed to this Act, in which the pursuer shall set forth the court in which the action is brought, his own name and designation, and the name and designation of the defender, and the prayer of the petition, without any statement whatever of the grounds of action. There shall be annexed to the petition a statement (in the form of an articulate condescendence) of the facts which form the grounds of action, and a note of the pursuer's pleas in law, which condescendence and note of pleas shall be held to constitute part of the petition.

The statement of facts shall be made succinctly and without quotation from documents except where indispensable.

The warrant following upon such petition shall be as nearly as may be in the form contained in the said Schedule (A.), which schedule, and the notes thereto and directions therein, shall be construed and have effect as part of this Act.

7. Any petition, warrant, interlocutor, order, or pleading may be written or printed, or partly written and partly printed.

8. All petitions may, except as hereinafter provided, proceed on seven days warning or inducæ where the defender is within Scotland, unless in Orkney and Shetland, or in any other island within Scotland, and fourteen days where he is in Orkney or Shetland, or such other island, or is not within Scotland ; and in all kinds of execution proceeding upon extracted decrees a seven days charge shall, except as hereinafter provided, be competent and sufficient :

Provided that,—

(1.) In any case in which a shorter warning or inducæ or period of charge is by law in force at the commencement of this Act sufficient, such shorter warning or inducæ or period of charge shall continue to be sufficient after the commencement of this act :

(2.) It shall be lawful for the sheriff to shorten the warning or inducæ as he shall see fit in any case which he considers to require special despatch.

9. It shall be competent to execute edictally any warrant of citation granted or charge on an extracted decree pronounced by a sheriff against any person furth of Scotland, by delivery of a copy thereof at the office of the keeper of edictal citations at Edinburgh according to the mode established in regard to the execution edictally of citations and charges on warants of the Court of Session ; or by sending to such keeper in a registered post-letter a certified copy of such warrant or charge, of which copy the keeper shall acknowledge the receipt. Every citation or charge so executed edictally shall be recorded in the record of edictal citations in Edinburgh in a separate record of edictal citations or charges against persons furth of Scotland cited or charged upon warrants proceeding from any sheriff court therein.

Where the party cited or charged has a known residence or place of business in England or Ireland, a copy of the petition and citation, or of the decree and charge, on fourteen days inducæ, shall be posted in a registered letter to the party at such address by the officer, whose execution shall bear that he has done so. The sheriff-clerk shall in all warrants to cite or charge persons furth of Scotland insert a warrant to cite or charge edictally.

10. Every petition commencing an action shall, after it has been lodged for calling, remain in the hands of the clerk of court, unless the sheriff shall give a special order in writing to the contrary.

In every defended action the pursuer shall forthwith, on the defence being lodged, lodge in process a copy of the petition, and of the warrant thereon, certified as correct by him or his agent in the cause, and which may thereafter be borrowed by any party to the process, and where a warrant has been granted to arrest on the dependence of the action, such certified copy shall be a sufficient warrant for such arrestment. Separate precepts of arrestment may be issued as heretofore.

11. Where a petition or any other pleading is lost or destroyed a copy thereof proved in the action to the satisfaction of the sheriff before whom the action is depending at the time, and authenticated in such manner as he shall require, may be substituted, and shall be held equivalent to the original for the purposes of the action.

12. With regard to the service of writs issuing from the sheriff courts, the following provisions shall have effect; that is to say,

- (1.) A warrant of citation issuing from any sheriff-court against any defender who under the provisions of this Act is subject to the jurisdiction of such sheriff-court, but who has his domicile within the jurisdiction of another sheriff court, may be competently executed against such defender within and by an officer of the sheriff-court of the county in which such defender is domiciled without any indorsation thereof by the sheriff-clerk of such last-mentioned county:
- (2.) A party who appears shall not be permitted to state any objection to the regularity of the execution or service as against himself of the petition by which he is convened:
- (3.) The sheriff may authorise the pursuer to serve of new his petition on any defender who has not entered appearance should it appear to the sheriff that there was any irregularity in the service on such defender, and the petition, on being so served of new, shall be proceeded with as if there had been no previous service, subject to such order as to expenses as to the sheriff shall seem just:
- (4.) Service, in ordinary form, on a minor, and on his father as curator at law, or upon a minor and his tutors and curators if known to the pursuer, or, if they are not known, upon the minor himself in ordinary form, and his tutors and curators edictally, shall be good and sufficient service on the minor for every purpose of law:
- (5.) An arrestment shall be ineffectual when the schedule of arrestment shall not have been personally served on the arrestee, unless a copy of such schedule shall also be sent to the arrestee at his last known place of abode, through the post, by the officer serving the same, who shall certify

in his execution that he has done so, stating the address to which the copy has been sent :

(6.) Service at the market cross is hereby abolished.

13. In an undefended action in the sheriff-court, any error or defect in the petition whereby the same is commenced may be amended if the sheriff shall think such amendment should be allowed ; and such amendment shall be made in writing, either upon the petition or in a separate paper, signed by the pursuer or his agent ; and the sheriff may, if he shall see fit, order the amended petition to be served upon any defender who has not entered appearance, and allow him to enter appearance within such time as shall seem proper : Provided that the expenses occasioned by such amendment shall not be chargeable against any defender ; provided also that such amendment shall not have the effect of validating diligence used on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him subsequent to the using of such diligence.

14. III.—Decrees in Absence.—On the expiration of the inducement in any action without appearance being entered for the defender, the sheriff shall, on the motion of the pursuer, grant decree in absence in common form in terms of the prayer of the petition, or subject to such restrictions as may be set forth in a minute written on the petition by the pursuer or his agent, and the sheriff-clerk may, seven days after the granting of a decree in absence, issue extract of such decree : Provided as follows :

(1.) At any time within seven days from the date of such decree it shall be competent for the defender, after consigning in the hands of the sheriff clerk the sum of two pounds sterling, and lodging his defences, to enrol the action in the sheriff's motion roll ; or when such seven days shall expire in time of vacation, after consignation as aforesaid, to lodge his defences with the sheriff clerk, at any time within such seven days, and thereafter to enrol the action in the said roll against the next ensuing sitting of the court ; and the action being in the roll, to move the court to recall the decree in absence ; and when this motion is made the sheriff shall pronounce an interlocutor recalling the decree in absence, and allowing the defences to be received ; and the action shall thereupon proceed as if appearance had been made in due time.

The sheriff shall, unless there seems to him to be any special reason to the contrary, order the consigned money to be paid to the pursuer toward his expenses, and that whether the decree in absence has been recalled or not.

Until the motion for the recall of the decree in absence has been disposed of, the decree shall not be extracted.

- (2.) Should the defender fail to take, within seven days of the date of such decree, the steps herein-before provided with a view to having the decree recalled, or to follow out the same, he may obtain the recall of the decree whether extracted or not at any time before implement has followed thereon, or so far as the same shall not have been implemented, by presenting to the sheriff a written note in which he shall set forth his explanation of his failure to enter appearance in the action and to take within such seven days the steps herein-before provided as aforesaid, or to follow out the same, and producing with such note his defences to the action in which the decree was granted and any documentary evidence he may have in support of such explanation, and consigning the sum of five pounds ; and it shall not be necessary for the pursuer to lodge any answer to the said note, but it shall be lawful for the sheriff, if satisfied with the explanation aforesaid, to recall the said decree, so far as not implemented, and order payment to the pursuer out of the consigned money of his expenses, including the expense of any charge or diligence upon the decree, or to refuse the note or do otherwise as he shall think just.

The balance of the consigned money, if any, shall remain in the hands of the sheriff-clerk until the sheriff shall make an order as to the disposal of the same.

- (3.) A note for the recall of a decree under the preceding subsection shall, after being intimated to the pursuer or his agent, and till refused, operate as a sist of diligence on such decree, and on such decree being recalled the action in which it was granted shall thereafter proceed in all respects as if appearance therein had been duly made by the defender.
- (4.) Any interlocutor or order recalling, or incidental to the recall, of a decree in absence pronounced under this section shall be final and not subject to review.
15. Where a decree upon which a charge is competent shall have been pronounced in absence of a defender after personal service of the petition on such defender, or after the entering of appearance for such defender with his authority, or where a defender shall have been personally charged on such a decree,

whether the petition was personally served upon him or appearance made for him with his authority or not, and such decree shall not have been recalled in virtue of the provisions to that effect herein-before contained, such decree, upon the lapse of six months after the expiration of a charge upon it not brought under review by suspension, where suspension is competent, shall be entitled to all the privileges of a decree in foro against such defender; and any decree on which a charge is not competent, obtained in absence after such personal service or appearance as aforesaid, shall be final after the lapse of twenty years from its date unless the same shall before that time have been lawfully recalled or brought under review by suspension or reduction.

16. **IV.—Entering Appearance: Records.**—Where the defender intends to state a defence, he shall enter appearance by lodging with the sheriff-clerk, before the expiration of the inducæ, a notice in the form of Schedule B. annexed to this Act; and he shall, on the first court day after the expiration of the inducæ, or at the latest at an adjourned diet not later than seven days after the expiration of the inducæ, lodge defences with the sheriff-clerk. The defences shall be in the form of articulate answers to the condescendence, and shall have appended thereto a note of the defender's pleas in law, and, where necessary, a statement of the facts on which the defender founds in defence.

The statement of facts and answers shall be made succinctly and without quotation from documents except where indispensable.

17. Neither party shall be entitled as matter of right to ask for a revisal of his pleadings; but it shall be competent for the sheriff to allow or to order a revisal of the pleadings, upon just cause shown.

18. If no motion for revisal is made, or if such a motion is refused, or after the lapse of the period within which the revised pleadings fall to be lodged where a revisal has been allowed or ordered, the sheriff-clerk shall transmit the process to the sheriff and the sheriff shall direct the action to be put to the roll for the first court day occurring not less than four days thereafter, and upon such day shall require the parties then to adjust their pleadings, and shall close the record.

19. It shall not be competent of consent of parties to prorogate the time for complying with any statutory enactment or order of the sheriff, whether with reference to the making up and closing of the record, appointing a diet of proof, diet of debate, or otherwise.

20. Where in any defended action one of the parties fails to appear by himself or his agent at a diet of proof, diet of debate, or

other diet in the cause, it shall be in the power of the sheriff to proceed in his absence, and unless a sufficient reason appear to the contrary, he shall, whether a motion to that effect is made or not, pronounce decree as libelled or of absolvitor (as the case may require), with expenses; or if all parties fail to appear, he shall, unless a sufficient reason appear to the contrary, dismiss the action.

21. Where an agent who has borrowed a process, or any part thereof, fails to return the same for any diet in the cause for which the process or the part thereof which may have been borrowed shall be required, it shall be the duty of the sheriff, whether a motion to that effect is made or not, to impose upon the agent so failing a fine of not less than one pound sterling, which fine shall be payable to the clerk of court for behoof of Her Majesty: Provided always, that it shall be competent for the sheriff who imposed the fine, on cause shown, to recall the order imposing the same, but such order shall not be subject to review.

22. At or before the closing of the record each party to an action shall produce all documents specially mentioned in his pleading and which are in his hands. Any other documents, whether in his hands or not, may be produced by him during the proof, but without prejudice to the power of the sheriff to order their production at any stage of the cause.

It shall be lawful for the sheriff to order or allow a party at any time before judgment to produce any document which he failed to produce timeously, upon such terms as to payment of expenses and allowing farther proof to the other party as to the sheriff shall seem just.

23. The sheriff shall at the time of closing the record require the parties then to state whether they are ready to renounce further probation; and if they are ready to do so the parties or their agents shall sign a minute to that effect on the interlocutor sheet; and the sheriff shall, in the interlocutor closing the record, pronounce a finding that further probation has been renounced, and shall appoint the action to be debated; but when probation is not renounced, the sheriff, when proof seems necessary, shall at the time of closing the record appoint a diet for proof on an early day, and shall hear the parties or their procurators immediately after such proof is led, unless one adjournment shall be allowed on cause shown for a period not exceeding seven days; and after such debate or hearing, as the case may be, the sheriff shall pronounce judgment with the least possible delay.

24. The sheriff may at any time amend any error or defect in the record in any action, upon such terms as to expenses and otherwise as to the sheriff shall seem proper, and all such amendments as may be necessary for the purpose of determining in the

action the real question in controversy between the parties shall be so made ; but it shall not be competent by such amendment to subject to the adjudication of the sheriff any larger sum or estate, or any other fund or property, than that specified in the petition, except with the consent of all the parties interested : Provided always, that no such amendment shall have the effect of validating diligence used on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence when stated by the defender himself, or by any person representing him, by a title, or in right of a debt contracted by him, subsequent to the execution of such diligence.

**25. V.—Special Actions; Multiplepoindings; Processes of Cessio.**—In actions of multiplepoinding the following provisions shall have effect :

- (1.) The party raising the action shall set forth in the petition who is the real raiser of the action :
- (2.) The sheriff shall, at the first calling of the action, where no defences are stated, or, where defences are stated and repelled, at the first calling thereafter, pronounce an order for claims within a short space :
- (3.) Any of the parties whose claims in the action depend upon the same grounds may state their claims in the same paper ; and may, where their claims are opposed and yet they are agreed on the facts, make their averments in the form of a joint case, appending thereto their respective claims and pleas in law :
- (4.) When the parties who shall appear and claim an interest in the fund in medio shall have lodged their claims, or had opportunity allowed them for doing so, the sheriff shall appoint the parties or their agents to meet him : and shall at such meeting allow each party to adjust his own part of the record, and to meet the averments of the other claimants so far as necessary ; and the procedure at such meeting, and in the after progress of the action, shall be as nearly as may be the same as is hereinbefore provided with reference to ordinary actions after defences have been lodged.

26. From and after the passing of this Act the following provisions shall have effect with respect to processes of *cessio bonorum* :

- (1.) All such actions shall be instituted in the sheriff court only :
- (2.) A debtor being insolvent and under a charge to pay any civil debt on which charge imprisonment may follow ;

~~1. The following are the names of the members of the Board of Directors.~~

1. The following is a list of the names of  
the members of the Board of Education of  
the City of New York, and the date of their  
appointment.

THE PRACTICE OF MEDICAL ETHICS IN THE HOSPITAL  
OF THE UNIVERSITY OF TORONTO AT TORONTO AND AT  
THE HOSPITAL FOR SICK CHILDREN AT TORONTO ARE  
NOT IDENTICAL. THE PRACTICE OF MEDICAL ETHICS AT  
THE HOSPITAL FOR SICK CHILDREN IS NOT IDENTICAL  
WITH THAT OF THE UNIVERSITY HOSPITAL. CONSIDERATION  
OF THE PRACTICE OF MEDICAL ETHICS AT THE UNIVERSITY  
HOSPITAL AND THE HOSPITAL FOR SICK CHILDREN  
IS, THEREFORE, OF GREAT IMPORTANCE.

**C. II.—PENALTIES.**—The following will be taken as applicable to  
the kindred cases of infringement or counterfeiting of the documents  
and of trademarks, that is to say, and against a like infringement or an unfair practice on the part of  
importing or distributing dealers.

- (2.) Granting interim decree for money, or making an order ad factum præstandum, or sisting an action ; or,
- (3.) Allowing, or refusing, or limiting the mode of proof ; or,
- (4.) Against which the sheriff-substitute, either ex proprio motu or on the motion of a party, grants leave to appeal.

28. An appeal to the sheriff may, when competent, be taken by a note of appeal written at the end or on the margin of the interlocutor sheet containing the judgment or interlocutor appealed from, within seven days after the date of such judgment or interlocutor, in the following or similar terms :

"The pursuer [or defender or other party] appeals to the sheriff."

The note shall be signed by the appellant or his agent, and shall bear the date on which it is signed. If the interlocutor sheet is not in the hands of the sheriff-clerk (which fact shall be certified by him) the note may be written, signed, and dated as aforesaid on a separate paper, prefixing merely the name of the cause and the date of the interlocutor appealed from, and having annexed a certificate by the sheriff-clerk to the effect foresaid :

On an appeal being so taken, the sheriff-clerk shall forthwith transmit the process to the sheriff, whose duty it shall be to determine what shall be the procedure in the appeal ; provided as follows :

- (1.) The sheriff may fix a diet for hearing the parties orally on the appeal, and may hear them accordingly, or may order a reclaiming petition and answers to be lodged, and prescribe the times for lodging the same ; but it shall not be competent for him in any case both to order a reclaiming petition and answers and an oral hearing :
- (2.) If both parties concur in asking the sheriff to dispose of the appeal without either ordering a reclaiming petition and answers or an oral hearing, the sheriff may, if he think fit, dispose of the same accordingly :
- (3.) It shall be competent for the sheriff, where the action is before him on appeal on any point, to open the record ex proprio motu, if the record shall appear to him not to have been properly made up, or to allow further proof.

29. Such appeal shall be effectual to submit to the review of the sheriff the whole interlocutors and judgments pronounced in the cause, not only at the instance of the appellant, but also at the instance of every other party appearing in the appeal, to the effect of enabling the sheriff to do complete justice without hindrance from the terms of any interlocutor in the cause, and without the necessity of any counter appeal ; and an appellant shall not be at liberty to withdraw or abandon an appeal without

of any clerk or officer of that office as such, shall be forthwith transferred to the office or offices of the sheriff-clerk of the county.

- (2.) It shall be lawful for the Lords Commissioners of Her Majesty's Treasury to regulate the office of such sheriff-clerk, and out of moneys to be voted by Parliament to award him such salary or personal remuneration, together with such allowances for clerks and office expenses, as shall seem just, having regard to the additional duties imposed upon him, and to the increased expenses of his office consequent on the transfer thereto of the duties of the office of commissary clerk:
- (3.) The sheriff-clerk shall account for and pay to the Queen's and Lord Treasurer's Remembrancer on behalf of Her Majesty all fees received in his office in connexion with the new business by this Act transferred to his office.

**41. VIII.—Amendment of Law as to Confirmation of Executors.**—Where, under the provisions of the ninth and subsequent sections of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, intituled "An Act to amend the law relating to the confirmation of executors in Scotland and to extend over all parts of the United Kingdom the effect of such confirmation and of grants of probate and administration," it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff-clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said Act, so far as they make it a condition of the sealing of a confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

**42.** When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the

principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such additional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed.

43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain or have appended thereto and signed by the sheriff-clerk a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, such confirmation shall be sealed with the seal of such court in the same manner as is provided by sections twelve and thirteen of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, as amended by this Act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the Court of Probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff-clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the court of which he is clerk.

44. The sheriff-clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated and published in terms of the statute," which certificate in lieu of the certificate (in the form of Schedule C. annexed to the said Act, which Schedule C. is hereby repealed), shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

of any clerk or officer of that office as such, shall be forthwith transferred to the office or offices of the sheriff-clerk of the county.

- (2.) It shall be lawful for the Lords Commissioners of Her Majesty's Treasury to regulate the office of such sheriff-clerk, and out of moneys to be voted by Parliament to award him such salary or personal remuneration, together with such allowances for clerks and office expenses, as shall seem just, having regard to the additional duties imposed upon him, and to the increased expenses of his office consequent on the transfer thereto of the duties of the office of commissary clerk:
- (3.) The sheriff-clerk shall account for and pay to the Queen's and Lord Treasurer's Remembrancer on behalf of Her Majesty all fees received in his office in connexion with the new business by this Act transferred to his office.

**41. VIII.—Amendment of Law as to Confirmation of Executors.**—Where, under the provisions of the ninth and subsequent sections of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, intituled “An Act to amend the law relating to the “confirmation of executors in Scotland and to extend over all parts “of the United Kingdom the effect of such confirmation and of “grants of probate and administration,” it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff-clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said Act, so far as they make it a condition of the sealing of a confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

**42.** When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the

principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such additional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed.

43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain or have appended thereto and signed by the sheriff-clerk a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, such confirmation shall be sealed with the seal of such court in the same manner as is provided by sections twelve and thirteen of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, as amended by this Act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the Court of Probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff-clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the court of which he is clerk.

44. The sheriff-clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated and published in terms of the statute," which certificate in lieu of the certificate (in the form of Schedule C. annexed to the said Act, which Schedule C. is hereby repealed), shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

of any clerk or officer of that office as such, shall be forthwith transferred to the office or offices of the sheriff-clerk of the county.

- (2.) It shall be lawful for the Lords Commissioners of Her Majesty's Treasury to regulate the office of such sheriff-clerk, and out of moneys to be voted by Parliament to award him such salary or personal remuneration, together with such allowances for clerks and office expenses, as shall seem just, having regard to the additional duties imposed upon him, and to the increased expenses of his office consequent on the transfer thereto of the duties of the office of commissary clerk:
- (3.) The sheriff-clerk shall account for and pay to the Queen's and Lord Treasurer's Remembrancer on behalf of Her Majesty all fees received in his office in connexion with the new business by this Act transferred to his office.

**41. VIII.—Amendment of Law as to Confirmation of Executors.**—Where, under the provisions of the ninth and subsequent sections of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, intituled “An Act to amend the law relating to the “confirmation of executors in Scotland and to extend over all parts “of the United Kingdom the effect of such confirmation and of “grants of probate and administration,” it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff-clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said Act, so far as they make it a condition of the sealing of a confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

**42.** When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the

principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such additional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of administration, as the case may be, had been granted by the court of probate in which it had been sealed.

43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain or have appended thereto and signed by the sheriff-clerk a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, such confirmation shall be sealed with the seal of such court in the same manner as is provided by sections twelve and thirteen of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, as amended by this Act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the Court of Probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff-clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the court of which he is clerk.

44. The sheriff-clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated and published in terms of the statute," which certificate in lieu of the certificate (in the form of Schedule C. annexed to the said Act, which Schedule C. is hereby repealed), shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

parties themselves; and shall direct intimation to be made on the walls of the court in such manner as shall seem fit for seven days; and where said parties have no known agents or are themselves furth of Scotland, the sheriff shall also appoint edictal intimation thereof to be made by publication in the record of edictal citations; and on the expiration of seven days from the date of such intimation or from the latest date thereof and on a certificate being lodged in process under the hand of the agent applying for the wakening, certifying that he has duly intimated the minute in terms of the sheriff's interlocutor, the sheriff may pronounce an interlocutor holding the cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

The provisions of this section shall not apply to any action which at the commencement of this Act stood dismissed in consequence of six months having elapsed without any proceeding having been taken therein, but may be applied to any action where a less period than six months had at the commencement of this Act elapsed without any proceeding having been taken therein.

50. It shall be lawful for any sheriff to pronounce and sign any interlocutor, judgment, or decree when furth of his sheriffdom: and every such interlocutor, judgment, or decree shall have all the like force and effect as if pronounced and signed by the sheriff while within the limits of his sheriffdom, but shall bear date at the seat of the court as of the day on which it is received thereby by the sheriff-clerk, and entered by him in the books of court.

It shall be lawful for one of Her Majesty's Principal Secretaries of State on an application made by or on behalf of any sheriff for leave of absence on account of temporary illness or other reasonable cause, to grant such leave of absence for such period as he shall deem proper, and to appoint some other person, who shall be a sheriff of some other sheriffdom, or shall be an advocate of not less than five years standing, to act as interim sheriff in the place and during the absence of such sheriff; and, on any such interim appointment being made, to fix what proportion of the salary of the sheriff shall be paid to the interim sheriff, and to certify the same in writing; and such certificate shall, when presented in Exchequer to the Queen's and Lord Treasurer's Remembrancer, be a sufficient warrant to him for payment to such interim sheriff of the proportion of the Sheriff's salary therein mentioned. -

In this section the word "sheriff" does not include sheriff-substitute.

Any interim sheriff appointed under this section shall have and exercise all the powers and privileges, and perform all the duties

of the sheriff, and his acts, orders, and judgments shall have the same force and effect as if done, made, or pronounced by the sheriff.

A sheriff appointed to be interim sheriff under this section shall not, by accepting such interim appointment, vacate his office as sheriff.

52. In every case of an application, whether by appeal or petition, made to the sheriff under any Act of Parliament which provides, or according to any practice in the sheriff court which allows, that the same shall be disposed of in a summary manner in the sheriff court without record of the defence or evidence, and without the judgment being subject to review, but which does not more particularly provide in what form the same shall be heard, tried, and determined, the application may be by petition in one of the forms as nearly as may be contained in Schedule A. annexed to this Act, and the sheriff shall appoint the application to be served and the parties to be heard at a diet to be fixed by him, and shall at that diet, or at an adjourned diet, summarily dispose of the matter after proof led when necessary, and hearing parties or their procurators thereon, and shall give his judgment in writing.

53. Notwithstanding anything contained in section eleven of the Act of the thirty-third and thirty-fourth years of the reign of Her present Majesty, chapter eighty-six, any additions made in terms of the recited section to the salaries of the sheriffs of united counties shall, instead of being paid out of moneys to be provided by Parliament for that purpose, be paid in the manner provided by the Act passed in the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-four, Schedule A.

54. The Court of Session may from time to time make such regulations by act of sederunt as shall be necessary for carrying into effect the purposes of this Act; and for regulating the forms of petitions, and modes of procedure and of pleadings; and generally the practice of the sheriff courts in respect of the matters to which the Act relates; and for regulating the fees of court, with the concurrence of the Commissioners of the Treasury, and also for regulating the fees of the agents practising before the said courts, and of shorthand writers appointed to take down proofs, and, so far as may be found expedient, for altering the course of proceeding herein-before prescribed in respect to the matters to which this Act relates, or any of them, and for regulating the place or places at which in each county the business heretofore conducted in the commissary court thereof shall be hereafter conducted in the sheriff court thereof, and the place or places and manner in which the records, books, documents, papers, and things connected there-

with should be hereafter kept; and may also repeal or alter the provisions of any act of sederunt relating to any of the matters herein-before specified as may be inconsistent with such new regulations; and for that purpose the Court of Session may meet during vacation as well as during session; and in preparing such act of sederunt the court may take the assistance of any six sheriffs and sheriffs-substitute whom they may select: Provided that every such act of sederunt shall, within one month after the date thereof, be transmitted by the Lord President of the Court of Session to one of Her Majesty's Principal Secretaries of State in order that it may be laid before both Houses of Parliament; and if either of the Houses of Parliament shall, by any resolution passed within thirty-six days after such act of sederunt has been laid before such House of Parliament, resolve that the whole or any part of such act of sederunt ought not to continue in force, in such case the whole or such part thereof as shall be so included in such resolution shall from and after such resolution cease to be binding.

## SCHEDULES.

**SCHEDULE (A).**

**IN THE SHERIFF COURT OF [REDACTED] SHIRE AT [REDACTED]**

*A. B. (design him), Pursuer,  
against*

*C. D. (design him), Defender.*

[NOTE.—Where any party sues, or is sued, in any special character,—as trustee, or inspector, or otherwise,—state what it is.]

The above-named pursuer submits to the court the condescension and note of pleas in law hereto annexed, and prays the court—

- a. To grant a decree against the above-named defendant, ordaining him to pay to the pursuer the sum of sterling.
  - b. Or, To sequestre, &c., and grant warrant to sell (*specify rent due and current, and the subjects in respect of which such rent is payable*), and to find the pursuer entitled to expenses, and grant warrant of sale therefor.
  - c. Or, To ordain the defender—
    - (1.) To deliver to the pursuer, &c. &c.
    - (2.) Or, Forthwith to repair, &c. &c., and failing his doing so within days, to authorise such repairs to be made at the sight of a person to be appointed, and to ordain the defender to pay the expenses thereby incurred.
  - d. Or, To grant warrant to sell, &c. &c.
  - e. Or, To interdict the defender from, &c. &c.  
and to grant interim interdict.
  - f. Or, To ordain the said C. D., defendant, to pay to the pursuer £ arrested by him in C. D.'s hands as due to E, in satisfaction of the sums due by E to the pursuer, conform to, &c. &c.

- g. Or, To ordain the defender to produce a full account of his intromissions as (here state the character in which the defender is accountable, as factor or otherwise), and to pay to the pursuer the sum of £ \_\_\_\_\_, or such other sum as may appear to be the true balance due by him ; and failing his producing such account, to ordain the defender to pay*
- h. Or, To find that he is holder of £ \_\_\_\_\_ (or state the nature of the fund or subject in medio), which is claimed by the defenders, and that he is only liable in once and single payment (or delivery) thereof, and is entitled, on payment (or delivery, or consignation), to be exonerated thereof, and to obtain payment of his expenses ; and that decree should issue in favour of the party or parties who shall be found to have best right to the fund (or subject) in medio. The real raiser hereof is*

## CONDESCENDENCE.

[State articulately the facts which form the grounds of action.]

## Note of PLEAS IN LAW.

[State them articulately.]

## WARRANT.

(Place and date.) The sheriff \_\_\_\_\_ of the county of grants warrant [to cite the defender, in the manner and upon the inducement, as the case may be] and ordains the defender, if he intends to show cause why the prayer of the petition should not be granted, to lodge in the hands of the clerk of court at \_\_\_\_\_ a notice of appearance within the inducement of citation hereon, under certification of being held as confessed, and grants warrant [to arrest on the dependence], [meantime grants interim interdict as craved], [meantime sequestrates and grants warrant to officers of court to inventory and secure as craved], [or as the case may be.]

NOTE.—In all these writs, where interest and expenses, or either, are sought, they must be prayed for.

Every writ shall be signed by the pursuer or his law agent, who shall add his address.

The warrant may be signed by the sheriff-clerk, unless interim interdict, sequestration, or other order not being an order for citation or warrant to arrest, is contained in the warrant, in which case the warrant shall be signed by the sheriff or sheriff-substitute; and a mere warrant of citation or arrestment may competently be signed by the sheriff or sheriff-substitute.

## SCHEDULE (B).

IN THE SHERIFF COURT OF \_\_\_\_\_ SHIRE AT \_\_\_\_\_

## NOTICE OF APPEARANCE.

In the action A. B. [design him] against C. D. [design him]. C. D., defender, enters appearance to defend said action.

C. D., defender.  
[Or] E., agent for defender.

## III.

## SHERIFF COURTS (SCOTLAND) ACT.

40 AND 41 VICTORIA, CHAPTER 50.

## ARRANGEMENT OF CLAUSES.

## Clause.

1. Short title.
2. Commencement of Act.
3. Appointment of salaried sheriffs-substitute vested in Her Majesty.
4. Qualification of sheriffs-substitute. 6 Geo. 4, c. 23, s. 9 repealed.
5. Tenure of office of salaried sheriffs-substitute.
6. Appointment of procurators-fiscal vested in sheriffs with approval of Secretary of State.
7. Procurator-fiscal may appoint depute with consent of Lord Advocate and sheriff.
8. Sheriffs' jurisdiction extended to certain questions of heritable right or title, &c.
9. Provisions as to actions, &c. made by this Act competent in the sheriff court.
10. How value of estate shall be determined.
11. Deed may be set aside by exception.
12. Abolition of fees to sheriffs and sheriffs-substitute.

An Act to amend the Law in regard to the appointment of Sheriffs-Substitute and Procurators-Fiscal in Scotland; to extend the jurisdiction of and amend the procedure in the Sheriff Courts of Scotland; and for certain other purposes connected therewith.—[14th August, 1877.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. This Act may be cited for all purposes as the Sheriff Courts (Scotland) Act, 1877.
2. Except in so far as otherwise expressly provided, this Act shall commence and take effect on and immediately after the first day of October one thousand eight hundred and seventy-seven.
3. From and after the passing of this Act the right of appointing to the salaried office of sheriff-substitute, heretofore belonging to

sheriffs, shall be transferred to, vested in, and exercised by Her Majesty, her heirs and successors, on the recommendation of one of Her Majesty's Principal Secretaries of State.

4. The ninth section of the Act passed in the sixth year of His Majesty George the Fourth, chapter twenty-three, is hereby repealed; and in lieu thereof it is enacted as follows:

From and after the passing of this Act no person shall be appointed to the office of salaried sheriff-substitute who shall not be an advocate or a law agent, within the meaning of the Act passed in the thirty-sixth and thirty-seventh years of the reign of Her present Majesty, chapter sixty-three; provided always, that such advocate or law agent shall not be of less than five years standing in his profession.

5. No person holding the office of sheriff-substitute or procurator fiscal at the passing of this Act, and receiving salary on that account, and no person who may hereafter be appointed to the office of salaried sheriff-substitute or procurator fiscal by virtue of the provisions of this Act, shall be removable from office, except by one of Her Majesty's Principal Secretaries of State, for inability or misbehaviour, upon a report by the Lord President of the Court of Session and the Lord Justice Clerk for the time being.

6. From and after the passing of this Act the appointment of procurators fiscal shall be made by the sheriff with the approval of one of Her Majesty's Principal Secretaries of State, and any procurator fiscal so appointed, and any procurator fiscal holding office at the passing of this Act (save in so far as herein-after expressly provided) shall not be removable from office except in the manner provided in the fifth section of this Act: Provided always, that no appointment of any procurator fiscal, whether made before or after the passing of this Act, shall fall by reason of the sheriff ceasing to hold office by reason of death, resignation, or otherwise. The appointment of any person to act as procurator fiscal ad interim or in the absence of the procurator fiscal in any sheriff court shall cease and determine from and after the commencement of this Act.

7. Except as herein-before provided, no sheriff shall have power, after the passing of this Act, to nominate or appoint any person to perform the duties of procurator fiscal; but it shall be lawful for a procurator fiscal, with the leave of the Lord Advocate and sheriff expressed in writing, to grant a deputation to one or more fit persons to be named in such writing for whose actings he shall be responsible, to sign writs, to appear in Court, and to conduct prosecutions and inquiries in his name and on his behalf. In the event of a vacancy in the office of procurator fiscal, any depute or deputes appointed in terms of this section shall have and discharge

all the powers, privileges, and duties of a procurator fiscal until such vacancy is filled up.

8. The jurisdictions, powers, and authorities of the sheriffs and sheriffs-substitute of Scotland shall be and the same are hereby extended to,—

- (1.) All actions (including actions of declarator, but excluding actions of adjudication, save in so far as now competent, and excluding actions of reduction), relating to a question of heritable right or title, where the value of the subject in dispute does not exceed the sum of fifty pounds by the year, or one thousand pounds value.
- (2.) Actions of declarator for the purpose of determining any question relating to the property in, or right of succession to, movables, where the value of the subject in dispute does not exceed the sum of one thousand pounds:
- (3.) Actions of division of commony, and division, or division and sale, of common property, where the value of the subject in dispute does not exceed the sum of fifty pounds by the year, or one thousand pounds value :

Provided that the Act of Parliament of Scotland passed in the year one thousand six hundred and ninety-five, intituled "Act concerning the dividing of commonies," shall for the purposes of this Act, and subject to the limitations hereof, be read and construed as if it conferred jurisdiction upon sheriffs and sheriffs-substitute in the same manner as it confers jurisdiction on the Court of Session :

- (4.) Any action against a foreigner, provided—
  - (1.) That such action would be competent in a sheriff court against a Scotsman subject to the jurisdiction thereof ; and
  - (2.) That a ship or other vessel belonging to such foreigner, or of which he is part owner or master, shall have been arrested within the sheriffdom :

Actions relating to questions of heritable right or title, or to division of commonies, or division, or division and sale, of common property, raised in a sheriff court, shall be raised in the sheriff court of the county in which the property forming the subject in dispute is situated, and all parties against whom any such action may be brought shall be subject in such action to the jurisdiction of the sheriff and sheriff-substitute of such county.

Nothing herein contained shall derogate from any jurisdiction, power, or authority now possessed by the sheriffs and sheriffs-substitute of Scotland.

9. In regard to every action brought under the preceding section

in the sheriff court, the following provisions shall have effect; that is to say,

- (1.) If a defender shall, at any time before an interlocutor closing the record is pronounced in the action, or within six days after such an interlocutor shall have been pronounced, lodge a note in the process in the following or similar terms; that is to say,

“The Defender prays that the process may be transmitted to the Court of Session.

“[Signed by the Defender  
[Date] or his Law Agent.]”

it shall be the duty of the sheriff-clerk forthwith to transmit the process to the keeper of the rolls of the First Division of the Court of Session, who shall, under the directions of the Lord President of the Court, mark on the petition the Division and the Lord Ordinary before whom it shall depend, and shall transmit the process to the depute clerk officiating at the bar of such Lord Ordinary; and the process having been so transmitted shall thereafter proceed before the Court of Session as nearly as may be as if it had been raised in that court:

- (2.) The Court of Session or either Division thereof or any Lord Ordinary therein may, if of opinion that the action might have been properly tried in the sheriff court, allow the defender who removed the action to the Court of Session, in the event of his being successful therein, such expenses only as they may consider that he would have been entitled to if successful in the action in the sheriff court:
- (3.) The provisions of any Act of Parliament excluding appeal to the Court of Session in respect of the value of a cause depending in the sheriff court shall not apply to actions brought therein under the preceding section.

10. In any case of question as to the value of the subject in dispute in any action brought in a sheriff court under the provisions of this Act extending the jurisdiction of the sheriffs, the sheriff or sheriff-substitute shall (in such way as he may think expedient) inquire into and determine the value, and his determination shall be final as regards the competency of bringing the action in the sheriff court.

If it shall appear to the sheriff or sheriff-substitute, as the case may be, that the value exceeds the amount specified by this Act, he may dismiss the action, with or without expenses, as he shall see fit, or on the motion of the pursuer may, if he shall see fit, order the sheriff-clerk to transmit the process to the keeper of the rolls of the First Division of the Court of Session, who shall, under

the directions of the Lord President of the Court, mark on the petition the Division and the Lord Ordinary before whom it shall depend, and shall transmit the process to the depute clerk officiating at the bar of such Lord Ordinary, and the process having been so transmitted shall thereafter proceed before the Court of Session as nearly as may be as if it had been raised in that court.

11. When in any action competent in the sheriff court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof: Provided always, that if any objection to a liquid document of debt, now maintainable only by way of reduction, shall be maintained by way of exception, the objector shall find such caution, or make such consignation, as the sheriff or sheriff-substitute may direct.

12. From and after the passing of this Act, the seventh section of "The Bankruptcy (Scotland) Amendment Act, 1860," and so much of the fifty-first section of "The Lands Clauses Consolidation (Scotland) Act, 1845," as provides for the payment of remuneration to sheriffs and sheriffs-substitute shall be repealed, and all payments to sheriffs and sheriffs-substitute in respect of the discharge of their official duties, other than the salaries provided to them out of public moneys, and the expenses mentioned in the last-recited section, shall cease and determine: Provided always, that it shall be lawful to the Commissioners of Her Majesty's Treasury to grant out of moneys to be provided by Parliament, such compensation as they shall think fit to any sheriff or sheriff-substitute in respect of the operation of this section, regard being had to the terms of the commission under which such sheriff or sheriff-substitute holds office, and to the conditions, if any, which may have been attached to any salary, or increase of salary, granted to such sheriff or sheriff-substitute.

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